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A NEW MUNICIPAL PROGRAM

NATIONAL MUNICIPAL LEAGUE SERIES

A NEW MUNICIPAL PROGRAM

EDITED BY

CLINTON ROGERS WOODRUFF

D. APPLETON AND COMPANY
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PREFACE

To explain and justify their conclusions, the various members of the National Municipal League's Committee on Municipal Program have coöperated in producing this volume. To each was assigned a specific subject for treatment, and to the editor the welding of them together.

This new Municipal Program is put forward with a full appreciation of the difficulties to be met with, but with a consciousness that it represents years of patient thought and hard experience on the part of those who have labored incessantly to improve conditions; and that it has had the formal approval and endorsement of the National Municipal League after three years' discussion.

Municipal Government in America has assumed a leading position among questions of government and this report is offered as a contribution to the solution of those phases of the problem having to do with its machinery. Two other volumes in the National Municipal League Series deal with other portions of this phase, the first, Woodruff's "City Government by Commission" and Toulmin's "The City Manager." These may be regarded as preliminary to the present volume, which aims to give at once the philosophical and the practical arguments for the Committee's conclusions which are embodied in a Model City Charter and model constitutional provisions. So that the book is doubly valuable alike to the student and the charter draftsman.

There are numerous details to be filled in like those for a municipal court and the public library, but these are

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being taken care of by separate committees which have not yet concluded their labors. The report is substantially complete so far as the general framework of government is concerned.

The New Municipal Program is put forth with the hope that it may be as substantial a contribution to charter revision as its predecessor and a stimulating factor in developing American charter-making along sound lines.

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A NEW
MUNICIPAL PROGRAM

A NEW MUNICIPAL PROGRAM

I

THE MUNICIPAL PROGRAM: OLD AND NEW

At the Philadelphia Conference for Good City Government (January, 1894) jointly called by the City Club of New York and the Municipal League of Philadelphia, the feeling on the part of students of municipal government and those interested in its improvement was largely one of hopelessness. The papers read at the Philadelphia meeting set forth a condition of affairs sufficient to fill the most stout-hearted with a feeling of dismay. Nevertheless, the thought was present in the minds of many that a careful study of municipal conditions and a frequent exchange of views would not only clear the atmosphere, but might eventually lead to the adoption of a program of action upon which union for definite work might be possible. Several of the speeches looked toward this end. Indeed, the proposition was advanced that there should be formed an organization having for its object the study of American municipal conditions as a precedent to the formulation of "a municipal program." One speaker thus outlined the thought:

NEED FOR EXCHANGE OF VIEWS

"One important lesson of this Conference must have been impressed on the minds of all who have taken part in it. The municipal reformers have for many years been duplicating one another's work unnecessarily. We have had no means of intercommunication; we have not been able to share one another's knowledge. In this country of ours there are examples of almost every kind of political experiment. If we only knew of these experiments, if we had some means of interchanging our dearly bought knowledge, we should save ourselves a deal of time and futile effort. I look to the formation or growth out of this municipal conference, and as its most favorable result, of some kind of national municipal league or national municipal council, call it what you please, but a central body to which information can be sent, and which will make it its business to gather information on its own account; to revise, condense, and compare reports made to it, and to keep the local centers of reform throughout the country in touch with one another. If you have a good thing in Philadelphia, a point in your charter, which we should have in New York, we should know it. If New York's experience will prove of any value to Chicago, Chicago should have the benefit of it, if only by way of awful example. We have no desire to try experiments that have been tried and have failed already."

There was a conviction, however, shared quite as much by those who held this view, as by those who were doubt-

ful of its wisdom or expediency, that the time was not ripe for the formulation of a Municipal Program. Sentiment had not crystallized. This preamble and resolution, as expressive of the sentiment of the meeting, was adopted without opposition:

"Whereas, the elements brought together in this conference should not be allowed to separate without providing some permanent agency for continuing its work and promoting a comparison of views, the exchange of experiences, the discussion of methods, and that mutual confidence and sympathy which adds so much to the strength and enthusiasm of fellow-workers in a great cause; it is therefore

"Resolved, that the President of this conference is requested to appoint a representative committee of seven to prepare a plan for the organization of a national municipal league, which shall be composed of associations formed in American cities, and having as an object the improvement of municipal government. Upon the completion of the plan and its approval by such associations, or as many of them as the said committee may deem necessary, the committee shall declare the proposed league to be fully organized, and prepared to enter upon its work."

THE NATIONAL MUNICIPAL LEAGUE ORGANIZED

Out of the Philadelphia meeting and of the Committee of Seven, appointed by the president thereof, in accordance with this resolution, grew the National Municipal League, formally organized in New York City in May,

1894. It at once entered upon its work, and proceeded to bring together through its affiliated membership the leading municipal reform organizations of the country; through its associate membership the leading students of municipal government; and through its annual conferences both these elements for a mutual exchange of views and a detailed study of the situation.

Four conferences, those held in Minneapolis (1894), Cleveland (1895), Baltimore (1896) and Louisville (1897), were devoted to a consideration of actual municipal conditions. The papers presented formed an important contribution to the study of municipal government as it actually existed in the United States, and furnished a substantial basis for municipal publicists in their efforts to better American municipal conditions.

In some respects, the Louisville conference, the fifth of the series, may be considered the most important held up to that time. In the first place, the meeting marked the beginning of a new era in the work of the National Municipal League. Theretofore the meetings had been devoted to a statement of municipal conditions and to a discussion of the lessons which they taught. There had been no attempt to formulate a program for adoption, or to construct a platform upon which municipal campaigns should be waged. No such effort had been made because in the minds of those actively identified with the League's management the time had not arrived when such a step was deemed either wise or feasible. Publicists and students were not in a position to agree upon a statement of belief, mainly because they had not given to the general plans

of the problem the necessary attention and study. Their particular experiences had been purely local.

The American people had been led by the educational work of the League, its conferences, and its published proceedings to a realization that there was an American municipal problem; that the question of good city government was something more than a merely local issue; that it was, perhaps, the most important single problem confronting the American people at that time.

A MUNICIPAL PROGRAM COMMITTEE

In the second place, the following resolution had been adopted at Louisville:

"Resolved, That the Executive Committee appoint a committee of ten to report on the feasibility of a Municipal Program which will embody the essential principles that must underlie successful municipal government, and which shall also set forth a working plan or system consistent with American industrial and political conditions, for putting such principles into practical operation; and such committee, if it finds such municipal program to be feasible, is instructed to report the same, with its reasons therefor, to the league, for consideration."

Accordingly the Executive Committee secured the consent of the following to serve on the "Municipal Program Committee": Horace E. Deming, New York; George W. Guthrie, Pittsburgh (later Ambassador to Japan); Charles Richardson, Philadelphia; Frank J. Goodnow, New York, now President Johns Hopkins University;

Prof. Leo S. Rowe, Philadelphia, now Assistant Secretary of the Treasury; Dr. Albert Shaw, Editor *Review of Reviews,* New York; Clinton Rogers Woodruff, Philadelphia. An exchange of suggestions through informal personal meetings and correspondence was the first step taken by the members of the committee. These were consolidated and embodied in a series of preliminary reports and criticisms which were laid before a session of the committee lasting nearly a week. At this meeting, the views of the committee were reduced to the form of definite propositions, tentatively adopted. A sub-committee was then appointed to elaborate these propositions into drafts of proposed constitutional amendments, and a general municipal corporations act for further examination, criticism and suggestion; and a revised draft was submitted to the Indianapolis meeting of the League, in November, 1898.

A MUNICIPAL PROGRAM FOUND TO BE FEASIBLE

In presenting this preliminary report, the committee took occasion to say that it did not "apologize for presenting this outline sketch of its labors to fulfill the commission intrusted to it. The fact that a body of men of widely divergent training, of strong personal convictions, and who approached the matter in hand from essentially different points of view, should and did come to unanimous agreement that a Municipal Program was feasible and practicable, and had conferred, and by comparison of opinion, were able to embody the result of their agreement in definite propositions, is a hopeful augury that the general body of the League, after a full opportunity

for discussion, criticism, and interchange of views, can and will adopt either the committee's propositions, or some improvement upon them. The committee therefore presents its report with the confident expectation that after sufficient time and opportunity shall have been given for such further consideration which the importance of the subject demands, the members of the League will be able formally to present to their fellow-citizens in the United States a definite Municipal Program that will embody the essential principles that must underlie successful municipal government, and which shall also set forth a working plan or system, consistent with American industrial and political conditions, for putting such principles into practical operation.

"The resolution of the League under which the committee acted involved a task for which few, if any, precedents existed. The committee was working to crystallize the result of the experiences of American and European cities, and at the same time to make the results of its labors practically applicable to our present conditions. Under such circumstances it became necessary to proceed with care, caution, and conservatism. The committee keenly felt the necessity of bringing any system they might recommend into organic relation with the traditions and accepted political ideas of the American people."

Sundry papers discussing the more important underlying principles that controlled the preparation of the amendments and acts were submitted to and approved by the several members of the committee, and constituted an

essential part of its report. These were read at the Indianapolis Conference, as a part of the preliminary report of the committee. These principal papers were in turn discussed in subsidiary papers by a number of students of the municipal problem, all of which were published in the proceedings of the Conference. At this meeting the report of the committee and criticisms and suggestions which had been made were referred back to the committee with instructions to complete their work for action at the next meeting of the League.

MUNICIPAL PROGRAM ADOPTED

In connection with the final draft presented the next year at Columbus, several additional explanatory papers were presented and like those of the preceding year were constituted an essential part of the committee's report. These papers and the text of the Constitutional Amendments and the Municipal Corporations Act, adopted by an unanimous vote at Columbus (1900), were the logical outcome of six years of effort on the part of the National Municipal League and the result of two years of unremitting and painstaking endeavor to present, in accordance with the original resolution, " a working system consistent with American industrial and political conditions, and embodying the essential principles that must underlie successful municipal government in this country." The Amendments and the Municipal Corporations Act, together with explanatory papers already referred to, and certain others, including one on " Municipal Development in the United States," by Professor John A. Fairlie, were published by The Macmillan Company in a volume

entitled "A Municipal Program." It was widely utilized by charter makers and constitutional conventions. It was nowhere enacted into law as a whole, but, as Dr. Delos F. Wilcox pointed out at the Chicago (1904) meeting, its influence "has been felt practically everywhere that charters have been framed, constitutions revised or municipal reform agitated 'under the flag.'" It was published in full in Honolulu for the benefit of the Hawaiian legislature. It was used by the Havana Charter Commission and, I believe, by the Porto Rican and Philippine Commissions. It has left marked traces in the new constitutions of Virginia and Alabama, and formed the basis for a sweeping amendment to the Colorado constitution. The Charter Commission of Portland, Oregon, used it. The Charter Revision Commission of New York adopted some of its provisions. The Duluth and St. Paul charters are in line with it in important respects. It has formed the basis of agitation for charter reform in Wisconsin, Michigan, Delaware, and doubtless many other states. Its experience in Ohio, however, has been unfortunate. The Municipal Code Commission in that state was at work at the time of the Columbus Conference for Good City Government, at which the Program was adopted. Perhaps on account of their proximity, the commissioners absorbed so many reform ideas that their code was rejected by the Ohio politicians."

FUNDAMENTAL PRINCIPLES INVOLVED

This Municipal Program embodied five fundamental principles of municipal government, which were defined by Dr. Wilcox in the same address to be:

1. That every city or other local community should have the right of self-government in its local affairs without the interference of outside governmental or party machinery.

2. That the city's public property in land, with especial reference to franchise rights, should be so safeguarded as to be preserved unimpaired for the use of all the people in this and future generations.

3. That all barriers should be removed which prevent the popular will from freely and effectively expressing itself as the public will.

4. That municipal administration should be conducted in the main by a class of public servants who by reason of experience and special training are particularly fitted for their official duties.

5. That official responsibility should be so placed through simplification of governmental machinery and full publicity of accounts that the people may hold their public servants to the execution of the public will with the least possible delay and uncertainty.

THE COMMISSION FORM OF GOVERNMENT

In the same year (1900) in which the first Municipal Program was officially and finally adopted occurred the Galveston flood which well nigh destroyed the city, physically and financially. Among other things swept away was the typical old style mayor and council form of government, which was replaced by a commission of five men appointed by the Governor of Texas. This commission worked swiftly and efficiently, to quote from a report of a committee of the National Municipal League,

and soon had the municipal government working and at much less annual cost. "After the emergency passed, an attempt was made to continue the same government with three members appointed by the governor and two chosen by popular vote, as it was supposed that so simple and powerful a form of organization would be unsafe if manned entirely by elective representatives. A court decision declared the continued appointment of city officers in this way to be unconstitutional, and the entire commission forthwith became elective. To the surprise of many observers, no demoralization ensued, and through successive elections the changes in the personnel have been very slight. Galveston began to claim that it was the best governed city in the United States, and Houston, Texas, in 1905, copied the Galveston charter with similar satisfaction."

In 1907 Des Moines adopted the Galveston plan, with the addition of the initiative, referendum, recall and non-partisan primary. This plan was widely copied, largely on the strength of the Des Moines experience, the number of cities adopting this form having increased until, on May 1, 1918, there were 111 cities and towns of 2,000 and over which had changed their governments to the new type.[1] Few changes of importance were made in the Des Moines model for several years (except the pref-

[1] The history of the movement is described in Bradford's "Commission Government in American Cities," Hamilton's "Dethronement of the City Boss" and Woodruff's "City Government by Commission." The latter contains a symposium of the comments of various authoritative observers. Analyses of the charters, together with the texts of the more significant ones, are to be found in Beard's "Digest of Short-Ballot Charters," a loose leaf volume on the subject. A study of the administrative workings of commission government is to be found in Bruere's

erential ballot added first by Grand Junction, Colo.) until the appearance in 1913 of the city manager, or commission manager modification.

Commission government, as it came to be popularly known, has been a success as compared with the older forms, in the opinion of a committee of the National Municipal League appointed in 1910, consisting of Charles A. Beard, Professor of Politics, Columbia University; Ernest S. Bradford, Washington, D. C.; Richard S. Childs, Secretary, National Short Ballot Organization; William Bennett Munro, Professor of Municipal Government, Harvard University; and Clinton Rogers Woodruff, Editor, *National Municipal Review*. This committee reported at Richmond (1911) that it found itself in agreement on the following interpretations of the major features of commission government:

THE BENEFICIAL FEATURES OF COMMISSION GOVERNMENT

"The people who live under it are generally more content. They feel that they are more effective politically and that commission government is an asset of their town. Substantial financial improvements have generally resulted, demonstrating a striking increase in efficiency and a higher standard of municipal accomplishment, and this may fairly be credited to the better working of the new plan.

"This relative success of commission government results primarily because it is more democratic (i.e., sen-

"The New City Government," comprising intensive examinations by representatives from the New York Bureau of Municipal Research.

sitive to public opinion) than the old form. Among the features which undoubtedly are responsible for this increased sensitiveness are:

"1. Its *unification of powers* as contrasted with the old undesirable separation of powers. The commission having all the power, has no one to blame for failure to please the public, cannot evade full responsibility, and having ample power to remedy each abuse, can be held responsible for any failure to do so. This stripping away of the old-time protective confusion-of-responsibility exposes the commission to the direct fire of public opinion and makes its members personally targets for public criticism. The unification of powers unifies the whole governmental system, gives the government the single controlling brain which is necessary to a successful organism, prevents lost motion, 'pulling and hauling,' deadlocks, and ill feeling.

"2. *The short ballot.*— This makes each elective official conspicuous on election day and after; makes intelligent voting so easy that practically every citizen can vote intelligently without any more conscious effort than he expended on his business of citizenship under the old plan.

"Being acutely sensitive and therefore anxious to please, commission government has been giving the people better government because the people are and always have been ready to applaud honest and progressive government. A contributing factor undoubtedly is the fact that the radical change has usually awakened a fresh civic interest among the citizens, which runs along of its own momentum for a considerable time and does much to tone up every branch of administration."

ONE MUNICIPAL PROGRAM AND COMMISSION GOVERNMENT

It will be seen that the commission form succeeded because it embodied certain of the fundamental principles of the Municipal Program. There might be a difference as to the form, but very little difference in the underlying thought of responsibility, responsiveness and simplicity. It is true that the first Municipal Program provided for a longer ballot than is now considered ideally desirable, but it was a short ballot as compared with what went before, inasmuch as only three kinds of elective officers were provided for: the mayor, the legislators and the auditor. It did provide for a non-partisan ballot, as do the best types of commission government, although in the opinion of the committee already quoted from, this was "highly desirable, but not absolutely indispensable, as the short ballot by making the party label a superfluous convenience, thereby destroys much of the label's influence anyway."

Neither the initiative, referendum nor recall were provided for in the original Municipal Program, although it was placed within the power of the council to establish them with the consent of the voters, as well as either preferential voting or proportional representation (Article V, Section 11, Municipal Corporations Act). "The initiative and referendum-by-protest have proved useful as provisions," in the judgment of the special committee, "for allaying the time-honored popular fear of entrusting large power to single bodies. The sensitiveness of commission government reduces the necessity for these de-

vices and instances of their use in commission governed cities are very uncommon. It should not be forgotten that Galveston and Houston, the first two cities to have the plan, made their success without these features." It might also have been pointed out that the initiative and the referendum were instruments whereby the policy-determining and the policy-executing functions of a city government could be kept apart. This was a distinction forcibly pointed out and persistently emphasized and insisted upon by the Committee on Municipal Program, and as in commission government the same group of men were both legislators *and* administrators, it looked as if the principle were ignored in the new form of government. As a matter of fact, in those commisson governments which have the initiative and referendum, there is an undoubted, even though unconscious and in a way imperfect recognition of the principle enunciated in the Program of 1900.

The Municipal Program and commission government agree in the abolition of ward lines as necessary to put an end to numerous petty abuses; as tending to prevent petty log-rolling and emphasizing the unity of the city. They also agree in providing for an independent auditor.

Thus it will be seen that, unconsciously or otherwise, the commission form of government embodied many important features of the National Municipal League's Program of 1900; but of course it did not embody the principle of home rule, for that is a constitutional, and not a charter principle; and there was a difference in form, and in the observing of the distinction between

legislation and administration, and more important still, in the diffusion of administrative responsibility.

THE COMING OF THE COMMISSION-MANAGER PLAN

While the committee of five was of the opinion that the commission form had led to a cleaning up of many ancient abuses, it recognized that it was by no means the ultimate form, but only a transitional form. In its second report (at Toronto, in 1913) it hailed "The Coming of the Commission-Manager Plan," pointing out that the first city in America to commit its administrative affairs to the charge of an appointive executive or city manager was Staunton, Va. This action was taken by ordinance in 1909. The Staunton manager, however, is responsible to a mayor and council of the old-fashioned type. Other cities have created managers under similar circumstances; but the city manager plan was more exactly described by the committee as the "*commission*-manager" plan, with the manager subordinate to a *single* governing body which is vested with all the powers of local government (like the commission in commission-governed cities). The committee defined the commission-manager plan to be "a single elective board (commission) representative, supervisory and legislative in function, the members giving only part time to municipal work and receiving nominal salaries or none; an appointive chief executive (city manager) hired by the board from anywhere in the country and holding office at the pleasure of the board. The manager appoints and controls the remaining city employees, subject to adequate civil service provisions. . . . This variation has both of the great basic merits

which our earlier report ascribed to the original commission plan, namely, the 'unification of powers' and 'the short ballot.'"

At this point, however, the committee divided, and four (Messrs. Beard, Childs, Munro and Woodruff) united in a majority which maintained that:

THE ADVANTAGES OF THE CITY MANAGER PLAN

"The city manager feature is a valuable addition to the commission plan, and we recommend to charter-makers serious consideration of the inclusion of this feature in new commission government charters. Its advantages are:

"1. It creates a single-headed administrative establishment instead of the five separate administrative establishments seen in the Des Moines plan. This administrative unity makes for harmony between municipal departments, since all are subject to a common head.

"2. The commission manager plan permits expertness in administration at the point where it is most valuable, namely, at the head.

"3. It permits comparative permanence in the office of the chief executive, whereas in all plans involving elective executives, long tenures are rare.

a. This permanence tends to rid us of amateur and transient executives and to substitute experienced experts; gives to administrative establishment the superior stability and continuity of personnel and policies which is a necessary precedent to solid and enduring administrative reforms; makes more feasible the consideration and carrying out of far-sighted projects extending over

long terms of years; makes it worth while for the executives to educate themselves seriously in municipal affairs, in the assurance that such education will be useful over a long period and in more than one city.

"4. The commission manager plan permits the chief executives to migrate from city to city, inasmuch as the city manager is not to be necessarily a resident of the city at the time of his appointment, and thus an experienced man can be summoned at an advanced salary from a similar post in another city.

a. This exchangeability opens up a splendid new profession, that of "city managership."

b. This exchangeability provides an ideal vehicle for the interchange of experience among the cities.

"5. The commission manager plan, while giving a single-headed administration, abolishes the one-man power seen in the old mayor-and-council plan. The manager has no independence and the city need not suffer from his personal whims or prejudices since he is subject to instant correction, or even discharge, by the commission. Likewise, in the commission, each member's individual whims or prejudices are safely submerged and averaged in the combined judgment of the whole commission, since no member exerts any authority in the municipal government save as one voting member of the commission.

a. This abolition of one-man power makes safer the free-handed extension of municipal powers and operations unhampered by checks and balances and red tape.

b. More discretion can be left to administrative officers to establish rulings as they go along, since they are

subject to continuous control and the ultimate appeal of dissatisfied citizens is to the fairness and intelligence of a group (the commission) rather than to a single and possibly opinionated man (an elective mayor). Inversely, laws and ordinances can be simpler, thus reducing the field of legal interpretation and bringing municipal business nearer to the simplicity, flexibility and straightforwardness of private business.

"6. The commission manager plan abandons all attempts to choose administrators by popular election. This is desirable because:

a. It is as difficult for the people to gauge executive and administrative ability in candidates as to estimate the professional worth of engineers and attorneys. As stated in our 1911 report, such tasks are not properly popular functions.

b. By removing all requirements of technical or administrative ability in elective officers, it broadens the field of popular choice and leaves the people free to follow their instinct which is to choose candidates primarily with reference to their representative character only. Laboring men, for instance, can then freely elect their own men to the commission, and there is no requirement (as in the Des Moines charter) that these representatives shall, despite their inexperience in managing large affairs, be given the active personal management of a more or less technical municipal department.

"7. The commission manager plan leaves the lines of responsibility unmistakably clear, avoiding the confusion in the Des Moines plan between the responsibility of the

individual commissioners and that of the commission as a whole.

"8. It provides basis for better discipline and harmony, inasmuch as the city manager cannot safely be at odds with the commission, as can the Des Moines commissioners in their capacity as department heads, or the mayor with the council in the mayor-and-council plan.

"9. It is better adapted for large cities than the Des Moines plan. Large cities should have more than five members in their commission to avoid overloading the members with work and responsibility and to avoid conferring too much legislative power per individual member. Unlike the Des Moines plan, the commission manager plan permits such enlarged commissions, and so opens the way to the broader and more diversified representation which large cities need.

"10. In very small cities, by providing the services of one well-paid manager instead of five or three paid commissioners, it makes possible economy in salaries and overhead expenses.

"11. It permits ward elections or proportional representation as the Des Moines plan does not. One or the other of these is likely to prove desirable in very large cities to preserve a district size that will not be so big that the cost and difficulty of effective canvassing will balk independent candidates, thereby giving a monopoly of hopeful nominations to permanent political machines.

"12. It creates positions (membership in the commission) which should be attractive to useful citizens, since the service offers opportunities for high usefulness without interruption of their private careers."

THE SECOND MUNICIPAL PROGRAM COMMITTEE

This extended quotation from the report of the League's Committee on Commission Government is given because in reality it constitutes the connecting link between the old and new Programs, as well as gives in concise form the arguments in favor of the city manager form over the commission form of city government. Moreover, it foreshadows and leads up to the fuller report of the second Committee on Municipal Program, giving the reasons for recommending the commission manager form in preference to the commission form, notwithstanding the wide vogue which the latter had, and is still having. This is not to be taken as undervaluing the importance of that form as an evolutionary step. It has wiped out where adopted many deep-seated abuses of long standing, such as ward representation; partisan nominations and domination; complexity and lack of concentration, with a large measure of success. It has served a further purpose in that it eventually led up to the next step of a carefully selected expert official, the embodiment of that principle of the first Municipal Program that "municipal administration should be conducted in the main by a class of public servants who by reason of experience and special training are particularly fitted for their official duties."

The second Committee on Municipal Program was appointed in 1913 to consider the original "Municipal Program" adopted in 1900 and if desirable to draft a new model charter and home rule constitutional amendments embodying the result of subsequent study and developments. It was composed of William Dudley Foulke,

Richmond, Indiana, then president of the National Municipal League, Chairman; M. N. Baker, of the *Engineering News;* Richard S. Childs, secretary of the Short Ballot Organization; John A. Fairlie, professor of political science, University of Illinois; Mayo Fesler, secretary, Cleveland Civic League; Augustus Raymond Hatton, professor of politics, Western Reserve University, Cleveland; Professor Herman G. James, University of Texas, and secretary of League of Texas Municipalities; President A. Lawrence Lowell, Harvard University; William Bennett Munro, professor of municipal government, Harvard University; Robert Treat Paine, Boston; Dr. Delos F. Wilcox, Assistant Commissioner of Water, New York City; Clinton Rogers Woodruff, secretary of the League.

This committee presented a partial report to the meeting of the League in Baltimore, in November, 1914, in the form of sections dealing with the council, the city manager and the civil service board. Two day sessions in New York, April 8 and 9, 1915, were then held, at which time these sections were carefully revised and other sections dealing with the initiative, referendum, recall and other electoral provisions were considered and added, and a partial draft of the constitutional provisions, which had been presented at the Baltimore meeting, was completed. Another meeting of the committee was held in New York September 14, 1915, at which time further revisions were made, and the financial provisions added as well as the two appendices treating of proportional representation and franchise provisions, all of which were included in the tentative draft. The Program was again submitted to the League at its annual meeting in Dayton on Novem-

ber 19, 1915, and after extended discussion, the sections were approved by the members there present. The document was referred back to the Committee on Municipal Program for further amendments, which were adopted at a meeting of the Committee in Philadelphia, December 27 and 28, 1915. Then the whole was submitted in pamphlet form to the entire membership of the National Municipal League with the following letter of explanation:

THE ADOPTION OF THE SECOND MUNICIPAL PROGRAM

Enclosed you will find a copy of "The Model City Charter and Municipal Home Rule," as prepared by the Committee on Municipal Program of the National Municipal League. This final report represents the results of three years' labor. The first report was presented at the Baltimore meeting of the League in November, 1914; the second report was presented to the Dayton meeting, November, 1915. In the meantime several editions of the conclusions reached by the committee had been published and distributed.

At Dayton the principles underlying the report were approved, and the committee given authority to make such final revisions as further study seemed to make necessary and to transmit the whole to the members of the League, the action of the League being as follows:

The Secretary: I move that after the Committee on Municipal Program has completed its draft, that it be instructed to have the same printed and a copy sent to each member of the League of record at that date for an expression of approval or disapproval, with the understanding that the Committee may fix a time limit for the expression of opinion, to publish the fact of approval or disapproval.

This action was carried unanimously.

In accordance with the authority vested in the Committee, the chairman has fixed May 1 as the time limit for the expression of opinion.

The Committee desires to call attention to the fact that the subjects of taxation, libraries, education, special assessments and public improvement are to be considered subsequently by special committees which are now at work on the subjects. The Committee felt that as these were separate and separable subjects, the publication of the model charter need not be further delayed until reports on them were received, considered and approved.

As there were no votes cast against the adoption of the charter within the prescribed time (and for that matter, none since), the Municipal Program as set forth in the Appendix of this volume[1] was finally promulgated as the League's "Model City Charter."

There have been sundry suggestions offered since, several having been prepared by the Committee on Budgets. These have to do with detail of procedure rather than principle, and may be made the subject of future consideration as possible amendments. There is one exception, that presented by Lieutenant Shaw, in a note which has been attached to the chapter on civil service.[1] The Charter and Constitutional provisions as presented represent the careful judgment of a group of twelve men of varied training and great experience in public life as well as in academic work, and life-long students of the problems involved. They do not assert that the Model Char-

[1] See page 295.

ter is the last word, but the latest, and that it embodies the form and content which it is believed will at the present state of public mind and practice on the subject yield the largest measure of efficient, democratic government.

THE NEW MODEL CITY CHARTER

As was the case in the first Program, the present one is presented in two parts: one a set of Constitutional Amendments designed to give cities the largest possible power of self-government. The charter in the first was in the form of a municipal corporations act, that is to say, a statute or act of assembly which would apply to all the cities in the state. The new model is assumed to be a home rule charter based upon some such provisions for constitutional home rule as those suggested in the report. When this or a similar charter is made available for cities by statute a comprehensive grant of powers may be and should be included in the act itself. Otherwise cities securing such a charter will have only the powers enumerated in the general law of the state and be subject to all the restrictions and inconveniences arising from that method of granting powers. It was suggested, therefore, by the Committee, that the following grant of powers be included in any such special statutory charter or optional charter law. The changes of language necessary to adapt it to a special statutory charter readily suggest themselves:

"Section.— Cities organized under this act shall have and are hereby granted authority to exercise all powers relating to their municipal affairs; and no enum-

eration of powers in any law shall be deemed to restrict the general grant of authority hereby conferred.

"The following shall be deemed to be a part of the powers conferred upon cities by this section:

"(a) To levy, assess and collect taxes and to borrow money within the limits prescribed by general law; and to levy and collect special assessments for benefits conferred.

"(b) To furnish all local public services; to purchase, hire, construct, own, maintain, and operate or lease local public utilities; to acquire, by condemnation or otherwise, within or without the corporate limits, property necessary for any such purpose, subject to restrictions imposed by general law for the protection of other communities; and to grant local public utility franchises and regulate the exercise thereof.

"(c) To make local public improvements and to acquire, by condemnation or otherwise, property within its corporate limits necessary for such improvements; and also to acquire an excess over that need for any such improvement, and to sell or lease such excess property with restrictions, in order to protect and preserve the improvement.

"(d) To issue and sell bonds on the security of any such excess property, or of any public utility owned by the city, or of the revenues thereof, or both, including in the case of a public utility, if deemed desirable by the city, a franchise stating the terms upon which, in case of foreclosure, the purchaser may operate such utility.

"(e) To organize and administer public schools and

libraries, subject to the general laws establishing a standard of education for the state.

" (f) To adopt and enforce within their limits local police, sanitary and other similar regulations not in conflict with general laws.

" Except as otherwise provided in this act, the council shall have authority to determine by whom and in what manner the powers granted by this section shall be exercised."

Similar changes will easily convert the " Model Charter " into the form of a municipal corporations act.

II

EXPERTS IN MUNICIPAL GOVERNMENT AND THE NEW MODEL CHARTER

The need of using experts in the administration of American cities requires demonstration less than it did formerly. Until a few years ago, their importance in securing good government was little perceived, even by people deeply interested in improving the condition of our cities and willing to adopt wide departures from traditional methods. But now, men holding very divergent views on political questions have come to see that their objects cannot be effectively attained, and, indeed, that no advance in the public welfare can be fully secured, unless the public makes use of the best tools it can find, and that the best tool of modern civilization is the trained human brain.

All thoughtful men agree to-day that, whatever our political merits in other respects, American cities have been on the whole less well administered than those of the most advanced countries in Europe; that the waste here has been greater, while the people have been less well served; and a careful study of the actual methods of operation shows that the contrast is due in great part to the use made of experts.

But the term itself is liable to misconception. Most people think of experts only as the members of the older

professions or of the highly skilled trades — the lawyers, the physicians, the engineers, the watchmakers, the gas-fitters, the men, in short, whom we must consult when something goes wrong, because they deal with things that we do not understand, and can do for us what we cannot do for ourselves at all. We think of the expert as the man without whom we are quite helpless. There is, however, another kind of expert, the man who can do things we can to some extent do for ourselves, but who can do them a great deal better. Every one can use a hammer and saw after a fashion, yet if he wants really good work done he employs a carpenter. Now all this is true of the public service. We have long realized that every city solicitor must be a lawyer, every city physician a doctor, and we are learning that no one is competent to design a steel bridge unless he is an engineer. But many people do not appreciate the fact that, although an intelligent man without special experience can after a fashion administer the police, the fire department, the streets, the schools, the poor relief, or the finances; can coördinate and keep in working order all these parts of the public service; and in rare instances can do these things remarkably well; yet an equally intelligent man who has had experience in the work and has been thoroughly trained therefor will, as a rule, do it much better, to the great benefit of the city and its inhabitants. The public administration of a large city is at least as difficult and complex as that of a railroad, and a railroad employs not only lawyers to conduct its law-suits, and engineers to lay out its lines and design its bridges, but also administrative experts — that is, men who have a special

knowledge of railroad management and make it their career for life — and except for young men who are learning to be experts, it will employ no one else.

It is in this larger sense, that of men trained in municipal administration, and not alone in the limited meaning which includes only members of recognized civic professions, that the cities in the progressive countries of Europe employ experts. The forms of city government in these countries differ widely, but they all agree in giving to the experts a wide field and substantial influence; whereas the cities in the United States, whatever their type of charter, have for the most part been alike in making a comparatively slight use of officials with an expert knowledge of municipal administration.

In Germany, which is almost ostentatiously the land of experts, the actual, as well as the official, head of the city government is the Burgomaster. He is a municipal administrator by profession, being often called if successful in one place to a larger one, just as the president of a railroad is in America. He is assisted by a corps of subordinate professional administrators in the various departments, and he is advised by citizens who are not experts and are chosen by the electorate of the city; but the business, as the saying goes, is mainly done at the head of the table. That the German cities are well governed no one doubts; that the excellence of their management is chiefly due to the use of experts few men would venture to deny. Their ways are not altogether our ways, but we can learn something of the secret of their efficiency, and adapt it to our own conditions.

English traditions and methods are more like our own.

In form the city government is democratic, the whole power being vested in a council which issues from a popular vote. But the council works through a body of expert administrative officers, who are virtually permanent, and for whom municipal service is a lifelong career. Moreover, although in outward appearance the city business is conducted by the council and its committees, one cannot go very far under the surface without finding that in fact the influence of the experts, both on current administration and on civic policy, is very great. It is exerted quietly, inconspicuously, in the committee rooms, and especially through the chairmen of the committees who have usually served some years in the council and appreciate the weight that should be given to the opinions of men thoroughly familiar with the problems that arise. The influence of the permanent officials is not due to any political authority. It is simply that which expert knowledge, when given a fair chance, will properly command and it makes for efficiency, honesty, and progress in civic welfare. The example of England is especially valuable for us because here, as there, the form must be democratic, the popular element must be strongly in evidence, and the expert had better not be too prominent. Above all he must take no part in politics, for politics naturally involves a not infrequent change of personnel which is quite inconsistent with permanence of tenure. The most important thing for the improvement of city government in the United States to-day is to learn to make a large use of experts and to use them in a form consistent with popular institutions.

That the permanent officials in the English cities are by no means out of harmony with democratic conditions, that they are the ministers, not the masters, of the public, no one familiar with the facts will doubt. A recent change, indeed, in English civic administration is noteworthy in this connection. Under the former school-boards the influence of the clerks of the boards, who corresponded to our superintendents of schools, was as a rule distinctly less than that of other permanent officials in the city; but with the abolition of these boards, and the transfer of their powers to the city or borough councils, there has been a marked increase in the importance of the professional school administrators. The city councils from their experience understood better their value and how to make use of it. Curiously enough a similar change has taken place in the position of superintendents of schools here. Within a generation their occupation has become much more of a profession, their tenure has become more permanent, their influence in the management of the public schools has greatly increased, they have more control over the qualifications and the selection of teachers, and their opinions on educational policy have far greater weight with the school committees. All this has taken place, not by legislative enactment, but by a growth of opinion among all people interested in education, among the members of the school boards and in the public at large. At the same time it may be observed that the management of the schools has not become bureaucratic, in the sense of getting out of touch with popular aspirations. On the contrary there has never been a time when the school authorities were

striving so earnestly as they are now to discover the real needs of the public, to work out plans for vocational and other training that will prepare the children for their occupations in life. It is a case where the people have learned to use good tools for a most important public object.

In order to make good use of a piece of machinery, one must understand it. Men did not learn to manage gasoline engines without running at first a risk of breaking their arms in cranking them or of getting the machinery out of order. This is not less true of a human mechanism or institution than of physical machinery. The conditions of its existence and functions must be comprehended or it will fail to fulfill its purpose and may become at best useless, at worst mischievous. The first condition of expert public service is permanence. A temporary expert is a contradiction in terms. An expert is one who has learned his business by long experience, who makes it his work in life, the profession to which he devotes his chief thought and labor until he obtains a command of its problems that other men do not possess. But in order that a man of ability should give up the chance of other occupations to devote himself wholly to a certain field of work, he must have a reasonable expectation that if successful he can make it a career, respected, enduring and fairly remunerated. The salary need not be very large if the employment is constant and there is a good prospect of promotion for efficient service. But if, when meritorious, a man is likely to be dropped for reasons unrelated to his own work; if, for example, a superintendent of streets, or of schools, or a

city treasurer is in danger of losing his office because the citizens have changed their minds about a national tariff, or the granting of liquor licenses; his occupation cannot be a career. It cannot have the nature of a profession, nor can there be any certainty that the incumbent will remain long enough in office to give the real service needed from an expert. In fact, it is morally certain that under such conditions the men in the offices of the city will not be experts in city administration, that they will not devote their whole lives to the study and practice of municipal service.

It follows that if we hope to use experts in our cities they must not hold elective offices, that their positions must be independent of political change. The duty of a superintendent of streets, or of schools, for example, is to furnish good streets or good schools, and keep them in proper condition. After hearing the advice of the expert, the public, through its political representatives, must decide what streets or what schools it will have and how much it will spend upon them; and the superintendent must do the best he can with the means given him. He must not be held responsible for the political decision, with which he may not have agreed, but for the way it has been carried out. Another conclusion follows with equal certainty. If the officer is to be an expert, and therefore, if he is to be permanent, he must keep entirely out of politics, both national and local. He must take no part in electoral campaigns, although the issues may be ones that affect his department or his plans. This may seem to be going very far. If, for instance, a Superintendent of Schools has been urging on his board a larger

expenditure on high schools, and it happens that this becomes one of the issues in a city election, it may seem absurd to say that he ought not to make speeches at campaign meetings in its favor; and yet if he does, he may well lose his place if the election goes against him. He can speak at other times but not then. Extraordinary cases may, of course arise, where corruption is involved, when a permanent official must speak out, whatever the consequences, cases where his duty as a citizen overrides his duty as a permanent expert. But in such a case he is compelled not only to risk his own career but also to impair the certainty of tenure of all permanent experts. Instances of this kind should be exceedingly rare where the position of the expert is well recognized and understood. The permanent expert must not lay his hands on politics and elections if they are not to lay their hands on him; he must keep himself free from politics if his office is to be free from politics. Nor must he in a democracy strive for political notoriety or public applause. A truly ambitious and worthy permanent official is abundantly satisfied by recognition from his employers and the members of the profession to which he belongs. This is one of the few cases where a man must forego the exercise of some of the privileges of citizenship to render a greater public service.

Finally, in order that the country may enjoy the benefits of a corps of permanent municipal experts, some adequate system of recruiting and training them must exist, and some method of promotion which opens a prospect of a desirable career in life. The recruiting and training may be provided in various ways. Men may be

brought in young from other occupations and learn their duties in the service of the city, as they do in England, and as is usually the case in commercial and industrial life here; or they may be specially trained by instruction in schools and colleges, and this would seem to be more in accord with the growing tendency of American education. But no plan of recruiting or training will avail anything if the subsequent career is not inviting. To provide a career worth pursuing it is essential that there should be sufficient certainty of promotion for merit, and in all but the largest cities this means that men who prove valuable must have a chance of advancement in other places than their own. We shall never have efficient municipal administration by expert officials until our cities, like our business, educational and other institutions, outgrow the idea that offices should be a perquisite of local citizens instead of a means of serving the public.

But, above all, we cannot have expert administration until a large part of the intelligent citizens appreciate the need of it; until they realize that it is the only method of making our cities more comfortable for their inhabitants. For some time to come, the effort must be in a large part a campaign of education, teaching as much as possible by example. We must strive to disabuse the public of the impression that permanent officials involve government by a rigid and unpopular bureaucracy. It is only by educating the electorate in the proper use of such men that progress can be made; for the main difficulty before us lies in the fact that the true functions of experts in government cannot be prescribed by law.

Americans are prone to rely on legal provisions, on con-

stitutional machinery, and to trust to that alone for results. But this cannot be done in the case of permanent administrative officials, because in the very nature of things the functions of the expert and the layman cannot be exactly defined. They must rest to some extent upon mutual confidence and respect; upon a free interchange of views, and incessant compromises of opinion voluntarily made. In every form of administration, and especially in a democracy, both expert and lay elements are indispensable for the best results; the expert for his knowledge of the most effective means of attaining the results desired; the layman to keep the expert in touch with public opinion, to preserve him from falling into ruts, to prevent the trees from obscuring his view of the forest. They are not two antagonistic elements, each seeking to enlarge its sphere of action at the expense of the other. They are not even independent powers in the government, each working in a distinct field, performing its appropriate acts, and having for these purposes an authority of its own. On the contrary, they are two parts of the same mechanism, or we may liken them to two elements in one chemical compound whose combined qualities give the character to the substance. In a sense, they take part jointly in every act performed. On everything that is done the expert should be consulted, and every act, however minute, technical or in the nature of routine, should be done with the approval, express or implied, of the lay controlling body which must assume to the public the responsibility therefor. The lay body must never cast the blame upon the expert. If convinced that he is unfit for his position it may remove him; for

permanence does not mean incompetence in office. But a removal must only mean a search for a better man to hold permanently, that is by a tenure dependent only upon his professional work. The expert, on the other hand, must realize that he is not the ultimate authority; that everything which ought in his opinion to be done cannot be accomplished; that he has a double function, the conduct of current administration, and persuading the representatives of the public so far as he can that his plans are wise.

It may seem that such a delicate interlacing relationship must be very difficult to create and maintain, but experience shows that this is not true. If the laymen in control recognize that they are not experts, and the expert that he is not an independent authority, still less a dictator, but an employee,— a servant not a master of the public,— it is astonishing how naturally the relations of the two adjust themselves, and with how little friction the result works itself out. There is only one serious danger in our cities, that of the use of appointments to offices as political patronage. Unless this can be eliminated from municipal government; until the citizens feel that the city ought to be managed in their interest, and not in the interest of a small group of office holders and office seekers; the use of experts will certainly be unsatisfactory and probably a failure.

If the foregoing is a fair statement of the functions of permanent experts and their relation to the representatives of the public it is evident that no charter can regulate their powers and duties rigidly, or even prescribe their appointment in a way that will ensure the result

desired. The utmost that can be done is to provide conditions which will render their employment obvious and natural, and have a tendency to educate public opinion on the subject. This is what the new model charter prepared by the National Municipal League seeks to do. It provides for a city council, elected at large, which has full power and authority to conduct the public business except as otherwise prescribed by the charter. The council is to elect one of its members chairman with the title of mayor. He is the official head of the city and represents it on all public occasions, but except in case of danger or emergency he is not its administrative head and acts only as chairman of the council. He is the presiding member of a body which is not intended to administer directly the affairs of the city, but to select, direct and control the officers who do so. For this purpose the council is to appoint a city manager as the chief executive officer of the city; and it is provided that "he shall be chosen solely on the basis of his executive and administrative qualifications," and that the "choice shall not be limited to inhabitants of the city or state." Clearly these provisions governing the selection cannot be enforced by law. There is nothing to prevent the council from appointing a mere political wire-puller or the candidate of the local boss, and asserting that he was chosen solely on the basis of his executive and administrative qualifications. Nor could any provision be devised that would really restrict the choice, and yet leave to the council the freedom in selection that is necessary if the relations between the manager and the council are to be such as to produce good government. When expert municipal administration has become

an established profession it will be possible, and may be wise, to prescribe that the city manager shall be a member thereof, but no such profession exists to-day. Nevertheless the provisions of the charter are by no means useless. They give notice to the council and to the public of the kind of man who ought to be chosen; they constrain the council to justify the appointment on those grounds, and they give to every member of the council and to every citizen a good ground for criticism of a selection made for political reasons. They indicate the selection of an expert, and in cities that desire good government they not only make the selection of an expert administrator possible, but tend to encourage and promote it. In short they provide a plan for expert administration and have an educational value for the public in that direction.

The same may be said about the city manager's tenure of office. If incompetent or negligent there must be some means of removing him, and as the council is responsible for his administration, and must work with and through him, the power of removal must rest with its members. But to discourage removal for political motives his appointment is to be made for an indefinite period, and hence there is no time when the question of reëlection comes up. He cannot be quietly dropped at the end of a term, but must be formally removed for cause. Moreover it is provided that he may demand written charges and a public hearing. This again does not fetter the council, but has a strong tendency to enlighten the public and prevent abuse.

Then comes the subject of his functions. The charter provides that he "shall be responsible to the council for

the proper administration of all affairs of the city, and to that end shall make all appointments"; that he "shall prepare and submit to the council the annual budget"; and that, "except when the council is considering his removal, he shall be entitled to be present at all meetings of the council and of its committees and to take part in their discussions." The provisions express very clearly the general principles that ought to govern the work of the expert administrator, and his relations to the representatives of the public. He is to have the direct charge of all the city business, and in fact, it is especially provided in section 3 of the charter that "Except for the purpose of inquiry the council and its members shall deal with the administrative service solely through the city manager, and neither the council nor any member thereof shall give orders to any of the subordinates of the city manager either publicly or privately"— any such order being made a criminal offense. Nevertheless he is responsible for his management to the council, which can approve or disagree with what he does, and may by ordinance or resolution give him directions. He submits the budget for the ensuing year which they are not bound to accept, but which they must receive and therefore consider, and which in the main they will almost inevitably adopt.

In general the relation of the city manager to the council are those which ought to prevail between the expert and the laymen in any well regulated enterprise or institution. In the case of appointments to office it was thought necessary to go farther. Normally appointments to the higher posts in a service might well be

subject to approval by the board of trustees or directors, but the danger of using city offices as political spoils, and the pressure that is sure to be brought to bear upon the council for that purpose, are so great that it was deemed wise to remove appointments from the control of the council altogether. It was therefore provided, not only that the city manager shall make all appointments, but also in the section already referred to that "Neither the council nor any of its members shall dictate the appointment of any person to office or employment by the city manager, or in any manner interfere with or prevent the city manager in exercising his own judgment in the appointment of officers and employees in the administrative service,"— any such dictation or interference being likewise made a punishable offense.

Finally the provision that the city manager shall be present at all meetings of the council and its committees is absolutely essential for the proper relations between them. If he is not present he cannot exert the influence upon their opinions that he ought to have, nor can they exercise so constant and comprehensive a supervision as they should. He will be to some extent an outside authority. There cannot be the free interchange of views, the mutual give and take that ought to exist. It will be observed that, except for the appointment of subordinate officials and employees, the provisions about the city manager are mainly designed to create the conditions under which an expert administrator should work, to indicate what his position should be, and to lead the public to understand it.

This is no less true of the provisions relating to the

heads of departments, called in the charter directors. Each of them must be chosen "on the basis of his general executive and administrative experience and ability and of his education, training and experience in the class of work which he is to administer." As in the case of the city manager this has a moral rather than a legal value. But for the directors the charter goes on to be more specific. It provides as follows: "The director of the department of law shall be a lawyer, of public health a sanitary engineer or a member of the medical profession, of public works an engineer, of education a teacher by profession, of public safety and welfare a man who has had administrative experience, and of public finance a man who has had experience in banking, accounting or other financial matters; or in each case the man must have rendered active service in the same department in this or some other city." The provision may not be, and probably no provision could wisely be, made legally enforceable; but it states very distinctly that the director must be an expert in a field closely related, at least, to the one for which he is appointed; and it will be very hard to evade this without provoking criticism which is obviously well founded. It is, indeed, by opening the door to obvious criticism whenever the spirit of the charter is violated that provisions for the employment of experts can be most effectively enforced.

The directors are appointed and removable by the city manager, to whom alone they are directly responsible for the management of their departments. This is in accordance with the policy of keeping the members of the council from interfering with the details of administra-

tion; while to indicate the position of the directors as real heads of the departments and at the same time their relations to the city manager as his subordinates and assistants, it is provided that they shall prepare departmental estimates, make other reports and recommendations, and give their advice whenever requested by him. In order to reduce as far as possible the danger of removal for political reasons, there is a provision in the case of the directors, as in that of the city manager himself, for written charges and a public hearing.

The appointment of officials and employees to positions of less importance in the service of the city is governed by elaborate provisions in the charter for a civil service board and selection by competitive examination. But that subject will be treated in a separate chapter in this book, and it would be out of place to discuss it here. It is well, however, to point out that the use of experts in city government can be a reality, and bring the improvement which it is capable of producing, only in case political patronage, the appointment to public office in consideration of service to a party or a candidate instead of service to the public, is wholly abolished; and experience has yet shown no way of doing this for the great mass of employments except competitive examinations conducted by a civil service board. The civil service rules are, therefore, essential to the plan for municipal government set forth in the new model charter.

In closing, let us remember that the plan proposed is able at the most to provide a method whereby American cities can obtain the use of experts in administration if they want it. Such a change must come if we are to

enjoy as good city government as other progressive countries. But no charter can produce a system whereby the use of expert administrators may be enforced by law against the wishes of the voters or of the men they elect to represent them. The model charter does all that can be done by providing an organization in which the use of trained men will be as natural as possible, and which will tend to educate the public in their employment. If the city manager is himself a true professional administrator, and remains in office long enough to acquire a powerful influence, it is certain that he will draw to his aid, and maintain, a corps of expert subordinates with the same professional spirit that he has himself. And even if he is not at first a trained expert, yet if the regulations governing the directors of the departments are not grossly violated, these men will have an expert knowledge and a professional attitude that will in time almost inevitably extend itself to the post of city manager. No sensible man believes that human institutions can be regenerated instantly by the words of a statute or charter. We must be satisfied if the road is pointed out and made passable. The city manager plan of municipal government is not the only one for reaching the end in view, but it is the best that has yet been proposed for American cities, and the one most in harmony with the spirit of our institutions.

III

CIVIL SERVICE AND EFFICIENCY

The dominant note in our model city charter is the elimination of the sytem of checks and balances in the organization of our cities and the substitution therefor of responsible government under a small legislative chamber which in its turn selects a single administrative head. The city manager plan represents not merely the type in common use in business corporations, but also in parliamentary government. This administrative chief is to be invested with the fullest powers and neither the council by which he is elected, nor its members are to interfere with him in his duties. He is merely to be accountable for the results of his stewardship and he is therefore to have the sole authority over his heads of departments and all subordinate officers and employees.

Necessity for the Competitive System

If this thought were pressed to its logical conclusion he should have the right to appoint as well as to promote, discipline and remove every official in the service. It has been found in practical experience, however, that the discretionary power of appointment lodged in a chief executive or in the heads of departments is quite sure to be abused and perverted to injurious political ends. The appointing officer is beset by persistent and often irre-

sistible importunities for places by those who wield a controlling political power in the community. Political and personal services are rewarded by public office. The unworthy and the unfit are chosen and the entire community is infected with corruption. It has been found that the way to avoid this is to make appointments to purely administrative places by a system of competitive examinations. This system has been successfully tried not only in our federal government, in several of the states and in most of our principal cities, but it was long since so successfully grafted upon the parliamentary system of government in England that when the administration there is changed, very few places in the service are included in the change, and the officials who have been selected by competitive examinations remain undisturbed.

The evils of the political or patronage system in our municipalities have been particularly great and no city can hope to avoid these evils unless the competitive system of appointments is adopted. The manager's power to control his subordinates is amply secured so long as his right to discipline them and to dismiss the undesirable remains unimpaired. Hence administrative officers, if they be not politicians, generally look with satisfaction and relief upon a system which takes the place of an employment bureau, and furnishes them with the names of those who have shown the best qualifications after a competitive test.

So the committee drafting the model charter felt that it would be unwise to be the mere slaves of a formula in regard to the unlimited authority of the city manager, but that the results of general experience should be recog-

nized in reference to appointments, transfers, promotions, reductions and removals by the adoption of the competitive system. We have therefore followed the best precedents of federal, state and municipal civil service laws.

Need of Detailed Provisions.— In drawing up these provisions we have departed in another respect from the plan adopted in other parts of this model charter. Elsewhere we have generally prescribed the mere framework of government, leaving each city to develop the details at its own will by means of its own ordinances, rules or regulations. But as to the competitive system experience has shown that in communities unfamiliar with that system the failure to include specific and detailed provisions has been followed by a laxity in the administration of the law which deprives it of much of its efficacy. These provisions therefore are set forth with greater detail than most others affecting municipal administration. It was felt that the doors to political intrigue and manipulation ought to be effectively closed before any efficient administration can be looked for in city government.

Method of Selecting the Civil Service Board

The initial difficulty in creating a system which shall eliminate politics and spoils is in securing in the first place a civil service board independent of political and personal manipulation and therefore independent of the council and even of the manager himself. For if council or manager can control the board and appoint and remove its members at pleasure such a board is likely to be the mere creature of the power to which it owes its existence, and if politics infects the course of appointments it may well

infect all the branches of administration. Unnecessary and unreasonable exceptions may be made to the competitive principle and large numbers of "temporary appointments" may be allowed. Even the examinations may be perverted in the hands of unscrupulous men to secure certain desired political results.

It is not easy to divorce the civil service board from *all* political influence because the ultimate source of its power is bound, in a republican government, to be some person or body, whether governor, council, mayor or manager who has been either directly or indirectly chosen by political methods. In order to remove the board as far as possible from political control a plan has been suggested which is now under consideration by the National Civil Service Reform League, to appoint the members by competitive examinations. The plan is this: that the governor of the state shall appoint a special examining board of three persons, one a member, chief examiner or secretary of some civil service commission already in existence, a second person, one who has been engaged continuously for two or more years in selecting trained employees for positions involving professional or technical skill, and the third a judge of a court of record. The special examiners are to select by competitive examinations a state civil service commissioner or commissioners and the state commission is to select by similar competitive examinations the municipal civil service commission or board, and the members both of the state commission and the municipal board are to hold their places indefinitely unless removed for malfeasance in office upon written charges duly proved before a special

board appointed for the purpose. This plan for the appointment and removal of a civil service board would undoubtedly do much to remove that body from political influence, but it has not yet been tried and your committee did not feel that they should recommend for adoption in the model charter a measure untested by practical experience.[1] The plan which offers the nearest approach to independence and which has been so tested is an independent appointment of three members of a civil service board by the city council for overlapping terms of six years each, so arranged that one member retires every two years, any member of the board to be removable for negligence, incapacity or malfeasance by a four-fifths vote of the council after written charges upon at least ten days' notice and after a public hearing. It is recognized that this does not furnish a perfect protection against all political influence, but it gives the members of the board a reasonable independence of the appointing power and where the public sentiment in a city is sufficiently strong to adopt the civil service provisions of our model charter it seems to offer a reasonable assurance that these provisions will be enforced and political appointments generally eliminated.

While the model charter provides that the civil service board shall consist of three members it is realized that in small towns a single civil service commissioner might be preferable. Moreover in those places where there is a state civil service commission the examinations and certifi-

[1] Full details as to this proposed model civil service law can be secured from the secretary of the National Civil Service Reform League, 79 Wall Street, New York.

cations might be made through the agency of that commission if the community in question felt disposed to relinquish to that extent the control of this part of its domestic administration.

The model charter provides that the board should employ a secretary and chief examiner, though the same person may perform the duties of both offices. It may be found desirable in some cases that the secretary and the chief examiner shall themselves constitute two out of the three members of the board, the third member being its president. It might also be provided that the places of secretary and chief examiner should be filled by competitive examination or by promotion or transfer from other positions in the competitive classified service. This would keep these places from political influence.

Scope of the Competitive Service.—It is provided that the superintendents, principals and teachers of schools as well as the heads of the various departments may be classified *if so directed by the council.* The question whether the public school service shall be included in the classified system is one which ought to be determined by local conditions.

The proposition that the heads of the different departments shall be selected by competitive tests is one that may be regarded as radical by those not familiar with the constant progress of the merit system, both in the federal government and in various states and cities. At the beginning of this reform movement large classes of employees were excepted, including those in expert and responsible administrative positions, because it was then

considered that men of high grade would not submit to examinations. This, however, is no longer the case. It is found that men of excellent professional, scientific and administrative attainments actually do compete in these tests. The examinations for such places are no longer mere written scholastic question sheets and answers, and the examiners are not the ordinary subordinates and employees of the civil service board, but are experts of high rank and character specially called in to prepare the competitive tests and to pass upon the qualifications of the competitors. Professional men and administrators of large experience and high character no longer feel a reluctance in submitting to an investigation. Hence there is no dearth of competitors and those who stand at the top are found to be excellent material out of which to select competent public servants.

In the federal service the supervising architect of the treasury is thus chosen as well as the professor of chemistry in the public health and marine service, and engineers of all kinds and in all branches of the government, also the superintendent of the lighthouse service as well as Indian reservation superintendents.[1] The applicant is required to give the names and addresses of say ten persons, five of whom have been in superior or subordinate business relations with him and have personal knowledge of his qualifications. He submits a complete statement of his general education, the institutions where he has studied and for how long and the courses pursued. He must detail the facts of his life, his environments, and occupations

[1] See article on "Expert City Management," by W. D. Foulke, *National Municipal Review*, Vol. I, page 549. C. R. W.

and show what special training he has had. He must furnish an account of his experience in managing men and describe his methods of dealing with them, and show what work he has done in an executive capacity. He must submit an essay or article to test his general intelligence. Each of these things are given ratings proportionate to their probable value in the successful administration of his office.

Such competitive tests have been successful in city government as well as in the federal service. In New York the chief of the fire department was selected on a competitive promotion examination. In Philadelphia the superintendent of the general hospital and the chief of the bureau of highways and street cleaning was selected by competitive tests. In Chicago the librarian of the great public library was so chosen, and he was one of the most eminent expert librarians in America. It is hoped that in the near future the most important administrative city offices under the city manager will be selected generally by methods similar to these.

Non-Competitive Places

It is indeed prescribed in our model charter that the civil service board may by unanimous vote provide for non-competitive tests for any position requiring peculiar and exceptional qualifications of a scientific, managerial, professional or educational character, but all such actions of the board and the reasons therefor shall be published in its annual report. This provision recognizes that there may, under exceptional circumstances, sometimes be a need of selecting a man by some other means than com-

petition. In practice, however, such selection has nearly always been found to be injurious. Personal or political motives are apt to creep in and it is of the utmost importance that such exceptions be closely limited to cases of the strictest necessity. Indeed in any city where the framers of the charter believe that such exceptions can be safely dispensed with, these provisions may very wisely be omitted.

Selection from the Eligible Lists

In regard to the selection from the eligible lists an important question arose whether the appointing officer ought to be allowed to choose from the three candidates graded highest as in the federal service, or from the two graded highest, or whether he should be required to appoint the one graded highest of all. Where the selection is made from one out of three there is still some ground for the exercise of political or personal favor which is undesirable. Considerable abuses have crept into the federal service by reason of this liberty of choice, in the case, for instance, of the fourth class postmasterships and among rural free delivery carriers, where the number of names upon the entire list will not average more than three and where the advice of congressmen in regard to these appointments has been unlawfully solicited and received. It is found that these appointments are very largely political. In cases where there are many applicants and the eligible lists are longer, this political influence is less apparent and it is felt that the appointing power ought to have some choice in selecting subordinates. Moreover, in some places the constitutional provisions

vesting the power of appointment in the superior officer have been construed to require that some such power of selection should be left to him. Our model charter therefore still follows the federal rule to this extent that the selection must be made from *not more* than the three candidates graded highest. But the civil service board may provide in its rules that the selection may be from the two candidates graded highest or that the man who stands at the top must be appointed. In many places (for instance in Chicago and in the Illinois state service) the highest man must receive the appointment. This eliminates all political or personal choice and where it has been adopted it has generally worked very well. If therefore in any city which is not hampered by constitutional provisions, it is felt that it is wiser to provide in the charter itself that the appointment must be made of the candidate graded highest or that the selection should be from the two highest, such a provision could be appropriately substituted for the one in our model charter.

Publicity of Eligible Lists

Another important provision not contained in the federal civil service law is that each list of eligibles with their respective grades shall be open to public inspection. If these lists can be kept secret by the civil service board there may be often no means of discovering whether personal or political favor may have dictated appointments, and there will always remain suspicion of this, even if the fact is otherwise. The federal civil service commission leaves these appointments thus open to suspicion when it refuses, as it has done, to allow the eligible lists to be

inspected by any one except the appointing officer or some member of Congress. This evil ought not to be permitted in city administration.

Promotions

The primary purpose of the civil service reform movement was the exclusion of political influence in making appointments to office; in other words it was the overthrow of the spoils system, a system that infected and corrupted not only the civil service itself, but also the legislative department of government and the community at large in all its political activities — primaries, conventions and elections. This elimination of patronage is measurably secured by open competitive examinations for admission, and in the early days of the reform movement very little attention was paid to the general conduct of the civil service in other particulars. The fact that better men were secured by the competitive system than by personal and political appointments was very justly regarded as a secondary consideration. There were no provisions in the law regarding promotions, transfers, reductions, suspensions and removals, although rules regulating these things naturally developed afterwards in the operation of the new system. It was felt at first that these things could safely be left to the discretion of the operating officers who were responsible for the work of their departments. But it is now realized that uniform rules in these matters also have a distinct advantage where they do not too greatly limit the power of superior officers to control their subordinates, and that the civil service board can

greatly aid such officers by prescribing appropriate tests and regulations. Our model charter, therefore, provides that this board shall prescribe in its rules for promotion from the lower grades to the higher based upon competitive records of efficiency and seniority to be furnished by the various departments or else upon competitive promotion tests or upon both together.

Efficiency Records

Seniority alone ought to play a very small part in making promotions from one grade to another. Efficiency records, if they are accurately kept, furnish the best methods of determining who should be thus advanced where the higher grades of the service are not essentially different from the lower grades. But experience shows that these efficiency records are often improperly kept. One head of an office, for instance, unwilling to discriminate between his subordinates, gives them all an equal grade, perhaps the highest rating possible. Such an efficiency record gives no information as to the relative deserts of the subordinates in that office. Perhaps in a neighboring office the man who marks his employees has a stricter notion of his duty; he will discriminate between them or perhaps mark them all at a lower grade. In case the promotions should involve a transfer from one office to another it is evident that such ratings will be very misleading. In order to secure any kind of justice it is necessary that the work of all the different offices should be coördinated and that essentially the same standards should be applied in each and the same methods adopted of determining the efficiency of each employee. For this

purpose the civil service board becomes not only a civil service, but also an efficiency bureau whose advice to the manager or heads of departments ought to be of the highest value. Provisions for these things are made in our proposed model law. (Sec. 43.)[1]

[1] Lieut. C. P. Shaw, one of the most valued members of the League, sent to the secretary in answer to the referendum after the distribution of the final edition of the charter on March 15th, the following criticism of a portion of Section 43:

"By this section the powers of the board are prescribed as follows: 'The board shall fix standards of efficiency and recommend measures *for coördinating the operation of the various departments* and for increasing individual, *group and departmental efficiency*.' This provision, I believe, is wholly destructive of the undivided responsibility which the city manager plan is intended to place on the city manager. In my opinion, the proper method of coördinating the various departments and securing their hearty coöperation would be to form the heads of the various departments into the manager's cabinet, as it might be called, or if preferred, call it the council of efficiency, and thus by advising among themselves, the heads of departments who are most radically concerned in promoting departmental and group efficiency would have the strongest impelling motive to secure harmony of action, which itself is an essential element of efficiency. No outside body could possibly do the necessary investigation without producing more or less friction and lack of harmony. With the heads of departments acting together to secure the result in which they are all interested, there should be a minimum of friction and a maximum of efficiency.

"With the city manager selected as an expert for the express purpose of securing efficiency through the elimination of politics and the selection of his subordinates for ascertained fitness, both the civil service commission and the bureau of efficiency become naturally *his subordinate agencies* for attaining these ends, and hence should be so organized as always to work with him, and not be placed in a position of possible antagonism. They should report to him, and he should have the final word in every case."

The reason for adopting in the charter the provision that the civil service board rather than any manager's cabinet shall fix standards of efficiency is due to the fact that it is the civil service board and not the manager or heads of departments which passes upon the qualifications for admission to the civil service. It is intended that this civil service board shall be an expert body upon the question of employment, including also the efficiency of the employees, and this being the special function of such a board it was believed that the work could be better done

But when a promotion involves new duties essentially different from those in the lower place a mere record of efficiency is not enough. The candidate for promotion ought also to show that he understands the duties of the new place to which he aspires and a competitive examination held for this purpose is highly desirable. In these cases part of the rating should be based upon the efficiency record of the candidate and part upon the knowledge of the new duties as shown in the competitive examination. The civil service board acting in conjunction with the operating officers can best determine how far the efficiency records and how far the competitive examination should determine such promotions.

When the competitive system was first adopted it was felt that admissions ought to be made only to the lower grades of the service and that the higher grades ought to be filled by promotion. This plan furnishes the strongest incentive to do good work and the idea of beginning at the bottom and working up is one which has always been popular in our industrial institutions and conforms to our ideas of democratic equality of opportunity. The entrance examinations, however, necessarily have to be arranged in reference to the particular duties of the position to which the applicant seeks admission and where these

by them than by a cabinet composed of the heads of departments who have so many other functions and duties to perform. The charter does not propose that the board shall have the final determination in "coördinating the different departments and for increasing group and departmental efficiency," but simply that they shall *recommend* measures for this purpose. They thus become, as Mr. Shaw desires, "the manager's subordinate agencies," and since he has the final authority, it is not seen why there is likely to be any antagonism to the injury of the service.

duties are of a special character involving expert or professional attainments they can not be filled appropriately from the mere clerical or other general grades of the service. For example, a mere clerical examination will not test the qualifications for an engineer's place. A man can not well be promoted from a clerk's position to that of an engineer. Therefore a special engineer's examination has to be held for the latter position, even though it involves more responsible duties, a higher grade and better pay than a mere clerical place.

Still for the general service it used to be considered that a man ought to go up step by step to the highest position attainable; for instance, from clerk to chief clerk, and then to chief of the division, or bureau, and that appointments to these higher places ought to be made from among those who held lower positions.

But it is realized to-day that sometimes the higher place, especially if it be an administrative office involving a wide knowledge of affairs and great responsibility, cannot be adequately filled by promotion from the lower grades, and that men of wider attainments than those who entered the service from mere clerical grades are necessary and therefore that a new and special examination ought to be given and while those filling lower positions should be admitted to the competition, yet such competition ought not to be confined to them alone.

In this matter the experience of the English civil service has been most instructive. It was found there that the intellectual qualifications of those in the lower grades did not always include that liberal education, that knowledge of men and that general information essential in the

higher positions. Applicants were therefore divided into two classes, one for ordinary clerkships and the other composed of highly trained men for higher positions. It was found that the men thus admitted were generally better fitted for dealing with members of Parliament and people outside the service than those obtained by promotion.

The so-called Ridley investigation into the service (1888–90), showed that while purely clerical work should be done by those entering the lower examinations and while the door of promotion should be open to all, that it was necessary to introduce a very limited number of men by a higher examination to fill some of the more important posts so that men of broad liberal culture should be attracted to the public service.[1] This plan has the disadvantage that it does not furnish the strongest incentive to good work on the part of the clerical force who, although they may have done their duty well, occasionally see men appointed from the outside to places above them. But their dissatisfaction is hardly to be weighed in the balance with the necessity of having broad men with wide attainments in the highest grades. The question is the same as that presented in industrial life. If the higher administrative places can be properly filled by those below, the employer will find it to his interest to fill them by promotion. If not, he looks elsewhere for the man he needs.

Lord Haldane, formerly war secretary and afterward Lord Chancellor, thus sets forth the reason why a higher education is necessary for the superior post: "When a civil servant comes in contact with an outside citizen, he has to persuade him and make the outsider see

[1] "The Civil Service of Great Britain," by Robert Moses.

that the point of view which the civil service represents is a reasonable one. That depends on his power to take a large view and to get at the principle and reason of the thing; and my experience is that the highly trained first division clerk is quite admirable for getting alongside the mind of the soldier, for getting alongside the mind of the civilian in the county association, for getting alongside the minds of the one hundred and one people you have to deal with in a complicated organization. . . . While I am not without sympathy with the complaint of democracy that the entrance to the higher positions in the civil service is by far too much the monopoly of a class, I reply that a highly educated clerk is essential for a particular kind of work which the state needs."

The evidence taken in the recent investigation by the Royal Commission in which Lord Haldane testified, showed that while there ought to have been more promotions and fewer appointments than were actually made yet that some such appointments were necessary (Moses, p. 241).

We have therefore provided in our model charter that appointments to such higher positions as shall be specified by the civil service board may, if the city manager approves, be made after competitive tests in which persons not in the service of the city may compete also, as well as applicants from the lower grades and from other branches of the service.

Investigations

Another clause in our civil service provisions provides that the civil service board may make investigations, not

only in regard to the execution of the civil service sections of the law and of the rules established thereunder, but also concerning the general condition of the civil service of the city or any branch thereof. Such a provision has been found of immense advantage in many places, notably in Chicago, where it has enabled the civil service commission of that city to uncover many defects of administration, to suggest appropriate remedies and to remove from the service those who have been guilty of corruption, inefficiency and other shortcomings. Such a provision enables the civil service board to act in the capacity of a bureau of municipal research and with the power to subpœna and examine witnesses and compel the production of documents, and it thus furnishes a far more effective method of uncovering abuses than where investigations are made by some outside body without the necessary legal authority.

Removals

Probably the question in our civil service provisions upon which the widest difference of opinion now exists is that regarding removals. In the early days of the civil service reform movement it was believed that the right of the appointing officer to suspend, reduce or remove his subordinates ought to be absolutely unrestricted. It was believed that so long as the entrance to the civil service was adequately guarded the exit might safely be left open. Political removals under the spoils system were principally made because the superior officer had some particular personal or political friend or protégé whom he wanted to put into the coveted place and when

he could not do this, it was thought that temptation to remove a subordinate who was doing his duty would be taken away. This view has in the main been justified by experience and since the adoption of the federal civil service law the number of political removals from the competitive classified service has greatly diminished. It may be truthfully said in a general way that there are a great many more men who are improperly kept in the service than those who are improperly removed. Still there were some unjust removals, some of them for personal and some for political reasons and as a check upon these removals it was insisted by the advocates of the merit system that the appointing officer should in all cases be obliged to state the reasons for such removal and should inform the man to be removed of any charges against him and give him an opportunity to answer and put his answer on record, but that no trial or examination of witnesses should be required except in the discretion of the removing officer. It was realized that the power of the superior officer to discipline his subordinates and to remove those whom he regarded as objectionable ought not to be impaired. George William Curtis, the leader of the reform movement in this country, said in his annual address at the meeting of the National Civil Service Reform League, August 4, 1886, "Removal for cause, if the cause were to be decided by any authority except that of the superior officer, instead of improving, would swiftly and enormously enhance the cost and ruin the efficiency of the public service by destroying subordination and making every lazy officer or clerk twice as lazy and incompetent as before."

Carl Schurz said on the same occasion, "I would leave to the appointing officer entire discretion in removing subordinates, but I should oblige him in all cases to state the reasons."

In 1896, the resolutions of the National Civil Service Reform League declared: "The League fully recognizes the importance of preserving to responsible superior officers the power of removal of their subordinates whenever in their judgment this power should be exercised in the public interest, but the League deems it no less important that the officer exercising this power should do it with full and trustworthy information as to the facts, and that reasonable safeguards should be afforded to employees against the loss of their livelihood for personal or political causes."

The rule of the federal civil service commission is drawn substantially in accordance with the above principle and it is provided that the commission shall have no jurisdiction to review the finding of the removing officer if the proper procedure be followed, unless it can be shown that the removal was for political or religious reasons. Throughout a long series of years the general effect of this removal rule has been excellent. The chief evil, as already remarked, is that there are not enough removals made and that a considerable number of inefficient men are permitted to stay in the service, and it is realized that there ought to be some method (automatic so far as possible) of getting rid of those men whom the superior officer, whether from kindness of heart, the desire to avoid trouble or other reasons, is unwilling to remove. A method for this has been found

in the Chicago civil service law, which gives the civil service commission the power to make such removals upon written charges and after hearing before a trial board appointed by the commission. These charges may be made by one of the officers of the commission itself. It also becomes the duty of the commission to establish a standard of efficiency for employees with a schedule of demerits based upon attendance and discipline and where the average of the employee for a certain established period falls below 70% charges must be made and unless a proper excuse is shown the employee is removed. This right of the commission to make removals has in the main operated well, though it must be said that of late years the number of removals thus made has been extremely small. Whether this is due to the efficiency of the service or to some laxity in keeping the records or in making removals cannot be definitely stated. The Chicago law, however, goes further and not only gives to the civil service commission the power to remove, but also takes away that power entirely from the appointing officer. He has only the power to suspend for thirty days and it was believed by the committee proposing this model charter that thus to take away the power of discipline, including removal, from the superior officer would lead to the destruction of all proper subordination. The federal removal rule has therefore been substantially incorporated into our model charter with the additional powers as above described granted to the civil service board.

Lieut. Shaw also objects to the provision in the charter which establishes "Three agencies for the removal

of officers or employees from the city service, namely, the city manager, the head of a department and the civil service board," and he adds:

"Experience with our Norfolk charter during the ten years that it has been in operation has abundantly proved that such a provision is absolutely unworkable and productive only of friction, confusion and inefficiency. In this charter, the mayor, the head of a department or the board of control can each dismiss. The arrangement is simply destructive of efficiency, and I should most strenuously protest against its incorporation into what claims to be 'A Model Charter.' The term 'Model' as applied to such a charter is wholly inapplicable. Instead of being called a 'model' it would better deserve, so far as this feature is concerned, the appellation 'A horrible example of how NOT TO DO IT.'"

Of this criticism it may be said that the experience of the Norfolk charter can hardly be conclusive since in that charter there was neither a city manager, invested with full administrative control nor a civil service board invested with the special power of determining efficiency and of making removals where that efficiency does not exist. A general board of control is quite a different sort of an organization.

In our proposed charter where the manager not only has the power to appoint but to dismiss the heads of departments, he can naturally control removals made by these department heads and no serious conflict of authority can arise. It might indeed have been just as well to have omitted the words "or by the head of the department in which he is employed" (Sect. 44), thus taking away

the right from the heads of departments who would then have to secure the manager's previous approval for every dismissal, but it is not perceived that the insertion of these words substantially affects the manager's ultimate power. The head of a department will certainly not dismiss any man whom the manager seriously wishes to retain when his own tenure of office depends upon the approval of his chief.

The reasons for giving the civil service board a concurrent power to remove or reduce an official or employee upon written charges of misconduct preferred by any citizen after hearing and also the power to dismiss those who fall below the minimum standard of efficiency established by them, have been set forth in the above article. There is one great advantage in giving this board the ultimate power of removing an employee proved to be inefficient or guilty of misconduct. So long as the manager only can remove, or an appeal to the manager can be entertained, he is constantly liable to pressure and importunities from the men removed and their friends, and whenever any political influences are present it has been found by experience that such pressure and importunities often prevail. It is believed that managers generally will welcome the power thus given to an independent body to discharge employees who have been proved to be unworthy and to relieve them of this pressure and political influence.

The remaining civil service provisions speak for themselves. They are based, it is believed, upon the best precedents obtainable at the present time. The desirability of the competitive system in cities as well as in the national and state governments has been so abun-

dantly established by experience that no additional arguments seem necessary in support of that system.

NOTE

In the foregoing discussion of the civil service provisions no reference has been made to their relation to the provisions made upon this subject in the first Municipal Program adopted by the National Municipal League in 1900. Indeed the difference between the original sections and those above discussed in respect to civil service is by no means so great as in regard to many other provisions in the model charter.

It was, however, found desirable in the first place to condense considerably the civil service sections adopted in 1900 in the matter of phraseology; secondly, to adapt them to the new commission manager plan of government, and thirdly to take advantage of the experience of intervening years and perfect a number of their provisions in accordance therewith. The main difference between the two sets of provisions are the following:

According to our original provisions the appointment of the civil service commission was vested in the mayor, who was to be the political as well as the administrative head of the city and was directly elected by the people. By this model charter the mayor as a chief executive no longer exists. The council is the supreme representative body, and the duties of the city manager are wholly administrative. Therefore the question naturally arose whether the civil service board should be elected by the council or appointed by the manager. Since the manager controlled the whole administration, if he also appointed and removed the civil service board, that board would be so absolutely dependent upon him that its functions in restraining his political or personal appointments would be greatly limited. The experience of many cities where the civil service board or commission has been the mere creature of the mayor has shown that it is desirable that that board should have more independence,

hence it was determined that the appointing power should be lodged in the council, and this independence secured by long terms of office, six years each, so arranged that the term of one member should expire every two years. The board is thus a continuing body and not subject to control by the manager, the members being only removable for neglect, in capacity or malfeasance in office after written charges and a public hearing, and then only by a four-fifths vote of the council.

Both our Municipal Program of 1900 and the present model charter provide that the civil service board (or commissioners as they were formerly called) shall promulgate civil service rules or regulations, but the present provisions are more specific as to character of these rules. Moreover it is now provided that they are to promulgate these rules only after public notice and hearing. The element of publicity is considered of value, it being believed that if public hearings are granted before the rules are made or amended many imperfections which might result from inadvertence or lack of skill will be avoided.

The Municipal Program of 1900 provided that such regulations should provide for the classification of offices and employments. The present provisions prescribe that the rules shall provide also for the standardization of these positions and that salaries shall be uniform for like service in each grade. The present charter also states what are the exceptions from such classification; it is not to include offices elected by the people, or judges, and may or may not include the directors of executive departments or the superintendents or teachers of the public schools as may be directed by council.

The provisions for open competitive examination in our model charter although quite different in form from those in our former Municipal Program, are much the same in substance, a clause being added that non-competitive tests can only be given by unanimous vote of the board for positions requiring peculiar and exceptional qualifications of a scientific, managerial, professional or educational character, and such action of the board, with

the reasons therefor, is to be published in its annual report.

A provision has been added in our present model that eligible lists shall remain in force not longer than two years. In the former program an eligible list was accessible to each person whose name appeared upon it. By the model charter it is open to public inspection. Provision is also made for re-instatement on such lists of persons separated from the service without fault or delinquency. By the former program, temporary appointments were limited to thirty days, by our model charter such appointments are not to exceed sixty days. Under the former, the period of probation was not to exceed three months; under the present it must not exceed six months.

The provisions in regard to promotion are much more explicit and detailed in the new model than in the previous one, and provide for promotion from the lower grades to the higher upon competitive records of efficiency and upon seniority, or upon competitive promotion tests, or both, and that appointments to higher positions may also be made after competitive tests in which persons not in the service of the city may also compete. An increase in compensation within a grade may be granted upon the basis of efficiency and seniority records.

The former program provided that the civil service commissioners should keep records of their proceedings and of the markings and grading upon examinations as well as all recommendations. The present model charter adds to this that the board is also to keep a public record of the conduct and efficiency of each person in the service. As to investigations, the board may make them, not only in respect to the execution of the civil service sections and the rules (as was provided for by the former program) but also concerning the general condition of the civil service of the city or any branch thereof and may fix standards, and recommend measures for increasing efficiency and for coördinating the operation of the various departments.

The provisions of the former program as to the roster of employees has been considerably condensed in our new

model, but the roster now also includes ordinary laborers.

As to removals, though the phraseology is altered, the methods provided are much the same, but it is added in the present model charter that an official or employee may be removed, not only by the manager or head of department, but by the civil service board upon written charges of misconduct preferred by any citizen and after reasonable notice and full hearing and that the board shall fix a minimum standard of conduct and efficiency, and if the employee falls below this he must show cause why he should not be removed, and if no satisfactory reason is given he is to be removed, suspended or reduced in grade as the board shall determine.

The sections against fraudulent practices and the prohibition of political activity are quite similar in the two in their general features, but a few new elements have been introduced. For instance *no person whatsoever* shall solicit political assessments or contributions from any one in the classified service, this prohibition being no longer limited to officials or employees; also no person about to be appointed to a classified position shall execute a resignation in advance of his appointment.

Any person violating any of the penal provisions of the Act is not only liable to fine and imprisonment, but if he be an applicant he shall be excluded from examination, if an eligible, his name shall be stricken from the list, and if an officer or employee he shall be removed from the service.

Any taxpayer may not only recover for the city all money paid in violation of the charter, but may enjoin the board from illegally certifying a payroll for services rendered and the rules are to have the force of law. These are the chief points of difference between the present model charter and the Municipal Program of 1900 in regard to the Civil Service.

IV

CONSTITUTIONAL MUNICIPAL HOME RULE

NOTHING is clearer than that people living in cities must be permitted wide freedom in the management of their municipal affairs if they are to develop any considerable political capacity. In this, they are not peculiar. Everywhere local self-government is the best, if not the indispensable school of effective citizenship. Furthermore, self-government is the only means of escape from ignorant, ill-advised and corrupt local government; the only method by which efficient local government can be permanently attained.

While no political theory has been more ardently proclaimed in America than this, no principle has been so persistently violated in American practice respecting cities. The reasons for this contradiction between profession and practice need not be detailed here. They are to be found in traditions attaching to political institutions founded among and for a people largely rural; in the nature and strength of American political parties; and in the influence of those forces which, desiring to exploit the people of the cities through the control of public utilities services, have seen their chances of success increased if the cities were kept in strict bondage to the state legislatures. The result is sufficiently marked. Of the nations boasting free institutions America has, in general, granted her

cities the smallest measure of local autonomy. In this respect she has lagged behind Great Britain and France and has been even less liberal than autocratic Prussia.

Upon the establishment of American independence, municipalities in America found themselves dependent on the legislatures of their respective states for the form of their governments and the powers which they might exercise. Legislative control of cities was unlimited. It should be said in passing that this was, and is, in no sense unusual. The most progressive and freest cities of Great Britain and Europe receive their systems of governments and derive their powers from legislative grants. Moreover, the power of these legislatures over the municipalities within their jurisdiction is not limited by any provisions of superior law such as may be afforded by our state constitutions. In Great Britain and Europe this power has, on the whole, been generously used. Cities have been provided with simple and flexible forms of government, granted broad powers, and then "through a wise and salutary neglect," permitted to settle their own problems. The result is a large measure of municipal freedom in the exercise of which the cities have not only made great progress, but have provided the chief training ground for self-government.

The history of legislative control of cities in the United States has been very different. Through a combination of the forces already mentioned, legislative treatment of cities became increasingly harassing and illiberal during the last three-quarters of the nineteenth century. So long as there were no cities of considerable size and the total urban population was relatively small this was not

of great moment. However, by the middle of the century, the municipal problem had become of such importance that it was no longer possible to remain indifferent as to how cities were governed. By that time, also, the state legislatures had begun to lose some of their original high repute because of their action regarding other matters than cities. To meet these growing legislative defects resort was had to the state constitutions. A cure was sought in constitutional provisions prohibiting the state legislatures from passing certain laws.

One of the most flagrant abuses during the period of unrestricted legislative power was the enactment of special city charters. Properly employed, this power might have been put to the laudable use of meeting the peculiar needs of individual cities. In actual practice, special legislation became a favorite weapon in the armory of national party politics. The governments of cities were frequently ripped up and reconstructed with the sole end in view of strengthening the majority party in the state legislature, or at least for the purpose of weakening the rival party. By dealing with cities individually, municipal offices and other patronage could be made to contribute to the strength of the dominant party. This pernicious use of legislative power did not always take the form of a complete city charter. It also came to be used for the purpose of making unsolicited amendments to city charters varying in importance from changing the name of the municipality to granting local public utility franchises.

Almost exactly at the middle of the nineteenth century, states began to insert provisions in their constitutions

prohibiting their legislatures from passing special laws for the incorporation and organization of municipalities or for changing or amending their charters. In some states, these provisions were practically nullified by dividing the cities into classes and passing laws applicable to each class. There were instances in which the state supreme court upheld classifications of such a nature that the old era of special legislation was abolished only in name. On the other hand, where legislation by classification was prevented, another difficulty arose. Municipalities, large and small, were required to conform to one rigid system regardless of special circumstances or needs. Furthermore, it was found that the requirement of general legislation did not entirely preclude political manipulation by the state legislatures. Municipal codes, general in form, frequently had a decidedly partisan cast and the same could be said of amendments thereto. It was also found that the requirement of general legislation hindered rather than aided the cities in their struggle to secure adequate powers.

The movement for constitutional restriction of state legislatures did not end with the prohibition of special legislation. There was a tendency to add specific prohibitions against the passage of specified laws respecting cities. On the whole, this policy of negation served a useful purpose. It did stop a certain amount of political tampering, and cut off a good deal of corrupt legislation, but enough interference was still possible to be annoying and hampering. Municipal powers were ridiculously inadequate, and the very constitutional restrictions inserted to protect the municipalities sometimes offered a plausi-

ble excuse for legislative inaction when relief was sought. As a result of these experiments, it became increasingly clear that a mere policy of negation on legislative action was insufficient.

Even under the most severe constitutional restrictions, the state legislatures could still dictate the form of city government in minute detail and give, withhold or take away powers at will. As a result, city governments remained complex and rigid in form, unadaptable to cities of varying sizes, tied to national party organizations and without adequate power to deal with local needs. An enlightened legislature could have avoided these difficulties. France and England have found it possible to provide a simple and flexible form of organization which is applicable to municipalities of great diversity in population. The same nations by legislative act have given their municipalities ample power to deal with local affairs. Unfortunately, an intelligent and sympathetic conception of the municipal problem has rarely manifested itself in an American state legislature.

Out of this situation, the movement for constitutional municipal home rule was a logical development. The policy of restricting legislative power over cities had produced only negative results and even those not all that had been expected. In addition to protection from legislative interference, the cities needed positive action which would enable them to meet their growing needs and emancipate themselves from the corrupting forces which were preying upon them. There appeared to be no reasonable hope of securing such action from a state legislature. It is not strange, therefore, that the idea arose of carry-

ing the American doctrine of federalism one step farther by granting certain powers to cities through the fundamental law of the state. Constitutional municipal home rule is, thus, but an expansion into a sort of intra-state federalism of the earlier practice of restricting legislative power over cities. Its purpose was to continue and extend such restrictions by adding a positive quality which they had previously lacked. It was a reply to the refusal of state legislatures to grant municipalities a reasonable degree of freedom in the management of local affairs.

The first home rule provision was embodied in the Missouri Constitution of 1875. In the light of more than forty years of experience since acquired, and of the later conception of municipal freedom, this was an awkward and timorous effort. Its operation was restricted to cities of more than 100,000 inhabitants. Any such city was authorized to " frame a charter for its own government, consistent with and subject to the constitution and laws " of the state. A further restriction required that any such charter should provide for a mayor and two houses of legislation. The work of framing a charter was placed in the hands of a board of thirteen freeholders chosen by the voters of the city. A charter so framed would supersede any existing charter and amendments thereto, if approved by four-sevenths of the voters at a general or special election. These provisions of the Missouri constitution have not been changed since their adoption, except that in 1902 St. Louis was released from the necessity of having a council of two houses.

In 1875, St. Louis was the only city in Missouri having more than 100,000 inhabitants. In the course of

time Kansas City also exceeded that number, but so far only those two cities come within the Missouri home rule provisions. In many other respects this first attempt to free cities by constitutional grant left much to be desired. The essential grant of power was that which authorized a city "to frame a charter for its own government," which, when properly adopted, should "supersede any existing charter and amendments thereto." However, this grant of power was qualified by the provision that any charter so framed must "be consistent with and subject to the constitution and laws" of the state. This language raised a series of perplexing questions: What might a city properly include in a charter for its own government? Was a home rule charter subject to all general laws of the state or only to those dealing with other than municipal matters? Would a law dealing with municipal affairs repeal a conflicting provision of a home rule charter previously adopted? These and many other questions could only be answered by appeal to the courts as cases arose. Unfortunately, the decisions of the Supreme Court of Missouri in such cases have been vacillating in the extreme. However, it is easy to be overcritical of this first attempt to free cities by constitutional process. The proponents of the idea had no precedent to guide them and the provisions which they secured were only such as could be wrung from a cautious and reluctant constitutional convention. It was no inconsiderable achievement to have introduced a method of dealing with cities which, though imperfect in form, reversed the Anglo-Saxon practice of centuries. Moreover, in spite of the defective character of the pro-

visions and of the sometimes inconsistent course of the Supreme Court, probably no one acquainted with the municipal history of St. Louis and Kansas City would deny that the Missouri experiment has been of positive value. As a result of it those two cities have acquired fuller control of their destinies than is permitted to most municipalities in the United States.

The first state to follow the lead of Missouri was one whose people are less fearful of experimentation and more persistent in their efforts to achieve any purpose which they have set for themselves. In 1879 a provision for constitutional municipal home rule was written into the constitution of California. In its original form, this was practically a duplicate of the home rule sections of the Missouri constitution. Its operation was restricted to cities of over 100,000 population, which made it applicable at that time only to San Francisco. However, the people of California cities did not rest content with this imperfect charter of liberty. In 1887, home rule powers were extended to cities having over 10,000 inhabitants and they were again widened in 1892 to include cities of over 3,500 population. Furthermore, as the cities acquired experience under the home rule sections, and especially as the supreme court of the state rendered decisions adverse to municipal aspirations, amendment after amendment to the constitution was adopted extending and consolidating the sphere of local autonomy. Thus, when it appeared that the Supreme Court would hold that any provision of a home rule charter would be subject to a general law subsequently passed dealing with the same matter, the constitution was amended to

provide that home rule charters should be subject to and controlled by general laws "*except in municipal affairs.*" In this manner, an attempt was made to make it clear that within a certain sphere, cities which had framed and adopted charters were not subject to state control. Not content with establishing the supremacy of a home rule charter within the general domain of municipal affairs, an amendment was adopted at the same election making it competent for any such charter to deal with certain specified measures. These included the constitution, regulation, government and jurisdiction of police courts; the election or appointment of boards of education; the establishment of boards of police commissioners, and the constitution, regulation, compensation and government of such boards and of the municipal police force, and finally the election or appointments of boards of election, their regulation, compensation, etc. In this manner, cities framing and adopting charters were authorized by specific enumeration to deal with matters which there was reason to fear the courts would hold were not strictly municipal in character.

In 1894, an amendment was adopted authorizing the consolidation of city and county government into one municipal government with one set of officers. Three years later, a further amendment made it clear that any charter framed for a consolidated city and county could provide for the manner in which county officers should be elected or appointed, for their terms of office and their compensation. Finally by amendments adopted in 1911 and 1914, charter-making powers were conferred upon counties. Altogether in the twenty-seven years from 1887 to

1914, the home rule provisions of the California constitution were amended or extended no less than fifteen times. As a result of this growth by accretion the California provisions give an impression of unnecessary length and complexity. However, this defect in form should not be permitted to obscure the fact that the cities of California have probably acquired a larger measure of freedom than has been granted to cities elsewhere in the world. It is also true that of the states which have placed home rule provisions in their constitutions, the experience of California has been the most varied and valuable.

Since the adoption of home rule in California, eleven other states have followed in the same path.[1] In general, it may be said of the later provisions that, in scope and effectiveness, they lie somewhere between those of Missouri and California.[2] From the experience of these thirteen states, extending over the period from 1875 to 1918, it is possible to deduce certain valid conclusions concerning this peculiarly American practice.

In the first place, in giving cities a sphere of constitutional autonomy, the states have not been prevented from exercising the needed control over matters of general state concern. Constitutional municipal home rule does not constitute the city an *imperium in imperio* as its oppo-

[1] Washington, 1889; Minnesota, 1896; Colorado, 1902; Oregon, 1906; Oklahoma, 1908; Michigan, 1909; Ohio, 1912; Arizona, 1912; Nebraska, 1912; Texas, 1912; Maryland, 1915. Among the home rule provisions of the various states, those of Ohio are best as to form. They also grant broader powers than those of any state except California.

[2] For the law of home rule as developed under the various constitutional provisions see Professor Howard Lee McBain's exhaustive study, "The Law and Practice of Home Rule."

nents never tire of saying in constitutional conventions; on the contrary it has certain positive advantages from the standpoint of state government. It saves the time of the legislature by reducing the number of bills to be considered dealing with purely local matters. In states without municipal home rule, it is not uncommon to have as much as one-third of the legislative time taken up with bills of no importance except to the municipalities to which they apply.[1] Such bills not only consume time which should be given to matters of importance to the state as a whole, but they become one of the chief factors in the general scheme of legislative log-rolling. Moreover, home rule removes from the legislature the temptation to enact laws affecting cities having either corrupt or partisan purposes. When municipalities can escape from such laws by the simple process of adopting or amending a charter, their passage is no longer attempted or urged. This purifying effect of municipal home rule upon both the legislature and the city is attested by the fact that the powerful forces tending to corrupt municipal government always oppose it. They thus make it clear that they can secure more from the legislature than from city authorities.

As to the cities themselves the advantages which have been gained from their varying degrees of freedom are manifold. It is noticeable, for instance, that home rule cities develop a high civic spirit more frequently than

[1] At the session of the Iowa Legislature held in 1913, 397 laws were enacted. Of that number 108 had to do with cities and towns. This takes no account of bills introduced and not enacted into law. The Iowa situation is fairly typical of non-home rule states.

others. This naturally results from the knowledge that their form of government and the conduct of their business is in their own hands. Such responsibility encourages action on the part of the city electorate when municipal affairs are wrongly conducted. Furthermore the very process of providing a charter for their local government is of great educational value and helps to arouse the people to a sense of community obligation. Consequently, taking the country as a whole, the outstanding cities in point of civic spirit and civic pride are those which have framed and adopted charters.

That home rule cities have derived great benefits as a result of their comparative immunity from legislative tinkering may be deduced from what has been above stated. In addition they have also been, in general, more secure in their powers and have profited greatly by their ability to construct governments suited to their peculiar needs.

The fear, sometimes expressed, that local charter making will result in a collection of badly constructed and slipshod charters has proven to be unfounded. In point of ability, local charter commissions are usually superior to the average state legislature, and they are much more likely to make use of expert assistance. They also show a greater inclination than state legislatures to familiarize themselves with work done elsewhere similar to that upon which they are engaged. This is evidenced by their tendency to consult the experience of other municipalities and to make use of language found in other city charters. As a result, city-made instruments of government compare favorably in draftsmanship with the

best product of our state legislatures and some of them have set a distinctly high standard of excellence.

Without overstating the case, it may be said that the most numerous and substantial contributions to the progress of municipal government in the United States are being made by the cities of the home rule states. These cities have led the way in simplifying the complicated systems of government which state legislatures fastened upon American municipalities; they have given the country its fullest demonstration of the manager plan of government and, having control of their own structure, they have been enabled readily to introduce improved methods of organization and administration. In the domain of electoral reform the contributions of the home rule cities have been striking. No such city has adopted a long ballot charter in years; partisan designations have been swept from the ballot with almost complete unanimity; preferential voting, permitting nomination by petition, has been given a trial, and the highly promising experiment with proportional representation has been inaugurated. The recall of elective offices was introduced by a home rule city, and the most complete and practical development of the initiative and referendum has been worked out in city-made charters.

This enumeration might give the impression that, if left to their own devices, city electorates lean too much toward innovation. Such is far from the case. Scores of cities are now operating under charters of their own construction and, in general, their attitude in charter making has been distinctly conservative. No city in framing a charter has shown an inclination to fill its funda-

mental law with promising, but experimental, provisions; but here and there, in widely separated cities, experiments have been made singly. In this manner a large body of trustworthy evidence available for all cities has been accumulated, without involving the stability of municipal institutions anywhere.

When the National Municipal League issued its "Municipal Program" eighteen years ago, it already felt justified in committing itself to the principle of constitutional municipal home rule. With a view to unshackling cities, certain constitutional and statutory provisions were at that time suggested. Since then the number of states granting home rule privileges to cities through their constitutions has trebled and a wealth of experience has been acquired. In the light of this experience, the League has reëxamined the position which it took in 1900 and, as a result, now puts forward the revised and amplified constitutional provisions printed elsewhere in this volume. This new suggestion is based on the following principles which are regarded as having been well established as a result of the actual practice of constitutional municipal home rule in the various states, viz.:

1. The legislature should be left in a position to work out a broad and comprehensive system of home rule based on statutes. (Secs. 1 and 2.)

2. The constitution should authorize cities to frame and adopt charters for their own government and to amend such charters. (Secs. 3 and 4.)

3. The constitution should, in general terms, grant authority to cities to exercise all powers relating to municipal affairs. (Sec. 5.)

4. As a reassurance to those who fear the disintegration of state power, and in order to make it clear to the courts that a distinction between local and general matters is intended, the constitution should indicate that the legislature retains power to pass general laws, applicable alike to all cities of the state, in matters relating to state affairs. (Sec. 5.)

5. To avoid the uncertainty attaching to a grant of powers in general terms, an enumeration of the more important powers which it is thought should be comprehended within the general grant should be inserted in the constitution. (Sec. 5.)

6. Authority should be reserved to the state government to require full publicity as to the financial conditions and transactions of cities. (Sec. 6.)

7. The constitutional provisions, through which cities are authorized to frame and adopt charters and acquire home rule powers, should be self-executing in all essential particulars.

8. The constitution should authorize the consolidation of city and county governments and the framing of a charter by and for any such consolidated city and county. (Sec. 8.)

A detailed discussion of these principles as embodied in the proposed constitutional provisions is unnecessary. For the most part, the meaning and purpose of the various sections will be evident to the reader. In a few instances, however, brief comment may be of some value.

The first principle is established by Sections 1 and 2 of the constitutional provisions. In accordance with these sections, the legislature would be required to pass a

general law for the incorporation of cities and villages. It is obvious that the conditions under which a given territory and population shall be permitted to pass from a rural to a municipal status politically must be established by some general authority. It would not be practicable to leave communities to decide this matter for themselves. The provision here suggested, however, leaves it to the legislature to determine what municipalities shall be classed as cities and what as villages. In view of the greater power which the legislature is permitted to retain over villages, this might, in some states, be considered an unwise concession. Where such a feeling exists, the difficulty may be avoided by stating in the constitution the point in population at which a municipality shall pass out of the village class.[1]

The legislature would also be required to provide by a general law for the organization and government of such cities and villages as did not adopt some special form of government made available by other features of the suggested provisions. It was not thought desirable to cut off the legislature by rigid constitutional restrictions from the opportunity of dealing generously and wisely with cities. For that reason, the legislature is authorized to enact other laws relating to the organization and government of cities and villages, with the proviso that no such law shall go into effect except when submitted to the electors of the municipality concerned and approved by a majority of those voting on the question. Under these simple provisions, any legislature which so desired could provide the municipalities of its state with such ample

[1] See the constitution of Ohio, Art. XVIII, Sec. 1.

powers, and make available for their adopting such a variety of optional charters, that it would scarcely be necessary for any city to frame and adopt a charter for its own government. This plan reserves all the benefits of special legislative charters without opening the way for any of their evils. Provisions similar to these are found in the home rule sections of the Ohio constitution [1] and, in that state, have proved to be of some value. While it is true that the legislature has not risen to its full opportunity, it has made a good beginning. Under such provisions there is hope that, in time, state legislatures may forget the bad habits acquired in the days of their complete supremacy and establish themselves as authorities which can be trusted to determine the structure of municipal government and establish the limits of municipal powers.

A sufficient guaranty that the legislature would not abuse its power over municipalities is afforded by the provision which authorizes cities [2] to frame and adopt their own charters. The procedure for such action laid down in the New Program is based on the experience of the more advanced home rule states. Probably in most states, these provisions in their present form would be operative without any assisting legislation. It should be noticed, however, that they assume the existence of election authorities constituted by the state and of laws which provide for the verification of signatures to petitions.

[1] Constitution of Ohio, Art. XVIII, Sec. 2.

[2] It will be noted that charter-making powers are conferred only upon cities. In at least one state, Ohio, such power is granted to all municipalities. Constitution of Ohio, Article XVIII, Sec. 7.

In these and other particulars, any state thinking of adopting these provisions should make sure that legislation is well established which would enable a city to act upon the constitutional authorization without further legislative assistance. If thought desirable, complete provisions as to the ballot and the filing and verifying of petitions can be embodied in the constitution itself. Whenever possible, however, it is desirable to avoid the duplication of administrative machinery such as that for the conduct of elections.

The provisions for granting powers to cities are found in Section 5. The first part of this section is designed to accomplish the purpose always intended, but not always achieved, by constitutional provisions for home rule. That purpose is to permit cities greater freedom of action in the management of their affairs by releasing them from the limitations of a strictly enumerated grant of powers. In seeking this end the method has been to grant to cities through the constitution, either by specific statement or by implication, the authority to exercise all powers which are municipal in character. The establishment of such a method of granting power to cities reverses the practice, which we have inherited from the English law, of naming municipal powers in detail, with the result that powers not so named are held by the courts to be denied. Any one at all acquainted with the operation of city governments is aware how awkward and unsatisfactory the old system frequently proves to be. There is no legislative body, no matter how wise or well intentioned, which can possibly foresee all the needs of a growing city. It is this system which occasions the

most frequent appeals to state legislatures for amendments to charters and municipal codes. The vast majority of such appeals are requests for authority to do things which are of no importance whatever to the state as a whole. The net result is an enormous waste of legislative time, and great inconvenience — sometimes great loss — to the municipalities. Experience in the home rule states indicates the necessity of extreme care in drawing the constitutional provision intended to authorize cities in one general grant to exercise all local or municipal powers. Accustomed to the long established English and American practice of enumerated powers, the courts are not inclined to recognize the new doctrine unless the constitutional intention is clear. In some states, judicial interpretation has all but eliminated any grant of municipal powers in general terms. It is not believed that the general grant of authority to "exercise all powers relating to municipal affairs," as set forth in section 5, could be called in question.

The enumeration of powers following the general grant of authority calls for particular attention. It is well known that, unless there is clear intimation to the contrary, the courts will hold that, where powers are enumerated, it is intended that only those named may be exercised. As a safeguard against this danger, it is provided in the first paragraph of the section that "no enumeration of powers in this constitution or any law shall be deemed to limit or restrict the general grant of authority hereby conferred." The further precaution is taken of prefacing the enumeration of powers with the declaration that the powers named, "shall be deemed to

be *a part* of the powers conferred upon cities by this section." By these statements, it is made clear that the powers enumerated are by way of partial definition of the general grant of authority to "exercise all powers relating to municipal affairs."

This enumeration of powers should make unnecessary most of the appeals to the courts which would otherwise be required to determine whether this or that power falls within the domain of municipal affairs. In the home rule states in which the cities have been largely dependent for their powers upon a general authorization to frame charters for their own government or to exercise all powers of local self-government, the content of the general grant of powers has been established only after tedious litigation. The list here given, though occupying a relatively small amount of space includes all the more important powers usually granted to cities and at least two which are somewhat unusual. The latter are the grant of the power of "excess condemnation" in section 5c, and the authorization to sell bonds on the security of excess property condemned, or of any public utility owned by the city, found in section 5d. These are likely to prove useful powers to the cities in years to come and, in the absence of a specific grant in the constitution, might be held by the courts to be outside the domain of municipal affairs.

It will be noted that some of the powers granted in the home rule provisions of the California constitution are not included in this enumeration. The two prominent instances are the failure to specify control by the city of the local police and of the authorities conducting

local elections. There is no doubt that, in the absence of some constitutional provision to the contrary, the legislature can provide for taking the local police entirely out of the hands of city authorities. In Missouri, this has been done in large measure in the case of both St. Louis and Kansas City. In most states, however, the tradition in favor of the local control of police is so well established that the legislature is not apt to violate it. One of the great needs of the immediate future is a better coördination of state and local police efforts. For that reason it does not seem best, except in extreme cases, to exclude the state entirely from the right to intervene in local police matters. But when the situation is such as now prevails in Missouri, as regards St. Louis and Kansas City, it would be justifiable, through the home rule provisions of the constitution, to exclude the state government from participation in the organization and control of the local police.

As regards the authorities for conducting elections, if those set up by the state do their work efficiently and honestly, there is no reason why the city should provide a duplicate piece of administrative machinery. There have been instances, however, where cities have found it practically impossible to secure an honest count of the ballots by a state appointed board. Where such a condition seems likely to continue, it would be proper to specify the right to constitute and control local boards of election among the powers relating to municipal affairs. From the foregoing it will be observed that, under the plan for home rule here suggested, the enumeration in the constitution of the powers comprehended within

the term "municipal affairs" can be broadened or narrowed to suit conditions in the individual state.

It is with considerable confidence that the National Municipal League offers the draft of these constitutional provisions for consideration in those states where a grant of home rule powers to cities is contemplated. Of course, it is not expected that they would fit into the constitutional system of any state without at least some changes in detail. In fact, it is particularly important that such provisions be brought into harmony with other phases of the fundamental law. But with such necessary concessions in mind, it is believed that this draft can be used with the assurance that it is superior in form and principle to the provisions for constitutional municipal home rule now found in any state constitution.

V

ELECTORAL PROVISIONS OF THE NEW MUNICIPAL PROGRAM

In its first municipal program, issued in 1898, the National Municipal League emphasized the desirability of eliminating from local elections both the party primary and the party form of ballots. Nothing has developed since then from experience which would lead this committee to suggest any change in the policy then adopted. The League has consistently stood for non-partisanship in city elections. By the use of the term "non-partisan," it has not meant that there should be no parties in municipal affairs, but rather that state and national political parties and issues should be eliminated, and local issues be made paramount, in purely local elections. Local municipal parties with definite political platforms based upon local issues are entirely consistent with the principle of non-partisanship in local affairs. In order to separate as far as possible local issues from national parties and issues, the new program provides that municipal elections shall be held only in the years when there are no state or national elections, or, if held in the same year, that they shall be held some thirty or sixty days before or after the state and national elections.

PREFERRED METHOD OF ELECTION

Three methods of electing candidates to public office are presented in this program, namely:

(a) Nominations by petition — no primary — election by a non-partisan proportional representation system.

(b) Nominations by petition — no primary — election by a non-partisan preferential ballot.

(c) Nominations (and election if a candidate receives more than half the votes) at a non-partisan primary and a single choice non-partisan ballot at the election.

The method of electing the council preferred by a substantial majority of the members of the committee is the Hare method of proportional representation, otherwise called the "single transferable vote." This method has been included in the text of the proposed charter.

THE HARE SYSTEM OF PROPORTIONAL REPRESENTATION

The object of this system is to give every element in the community, and every individual voter, an opportunity to share equitably in the election to the council of their most trusted spokesmen. It also gives each political group representation in proportion to its relative voting strength.

Nominations are made by petition, each petition being signed by a specified number of voters. No voter is allowed to sign more than one. The number of signatures required should depend not only on the number of

voters in the city, but on the number of seats in the council. The more the voters, and the fewer the seats, the more the signatures that should be required. Usually the number required should be from one half of one per cent to two per cent of the voters.

The Hare ballot gives the voters the opportunity of expressing their preferences for the council by means of numerals, 1 for first choice, 2 for second choice, etc. They are permitted to express thus as many preferences as they please, with the assurance that the indication of a lower choice will in no case operate, when the votes are counted, to reduce the chances of election of a candidate indicated as a higher choice.

At the voting precincts no attention is paid to anything on the ballots except the first choices. This makes the work of the local election officials very easy. After the polls are closed the precinct election officials sort the ballots according to the first choices of the voters. The ballots for each candidate are put up in separate packages, showing the total number of ballots in each and the name of the candidate for whom cast as a first choice. All of the ballots and records are then forwarded to the election authorities, who proceed to add and tabulate all of the first choice votes, in accordance with the Hare rules outlined in the proposed model charter. The whole number of valid ballots is then divided by a number greater by one than the number of places to be filled. The next whole number larger than the quotient thus obtained is the "quota." All candidates who receive a number of first choice votes equal to or greater than the quota are declared elected. All surpluses above the required quota

cast for the elected candidates are then transferred to the candidates receiving the voter's second choice, each surplus ballot beng transferred to the credit of the candidate marked on that ballot as second choice (or next available choice in case the second choice is already elected).

After these transfers have been completed and any candidates declared elected who have received the quota, the lowest candidate on the ballot is dropped and his ballots are transferred, each according to the next available choice marked on it. Thus the count proceeds, by the dropping of the lowest candidates, one by one, until the quota has been received by as many candidates as are to be elected or until the number of candidates has been reduced to that number.

This method of counting gives each voter, with few exceptions, a share in the election to the council of the candidate whom he prefers to help elect. To express it in another way, the count sorts the voters out, by means of their ballots, into as many unanimous and approximately equal constituencies as there are councilmen to be elected, and lets each such constituency elect the candidate whom it is united in desiring to elect.

The most obvious result of such a system of election, of course, is the one which is suggested by its name of "proportional representation," namely that it gives to each group of voters in the community as many seats in the council as it is entitled to, based upon the number of votes it casts. In this respect the method differs radically from the two alternative methods mentioned above, both of which are intended to accomplish the election

of the entire membership of the council by a majority or plurality of the voters.

Advantages of Hare Election System

Besides the "proportional" apportionment of the seats, however, the Hare system has other results which, though less obvious, appear to be no less important. The advantages claimed for it are as follows:

1. It makes primary elections unnecessary.

2. It gives the voters real freedom to nominate independent candidates when the candidates nominated by their group are not all to their liking. This freedom is due to the fact that the preferences which the voter may express on the Hare ballot are so treated in the count that he runs no risk, provided only he marks a sufficient number of preferences, of throwing his vote away by giving a high preference to a candidate supposed to lack support.

3. It brings out as candidates strong men, who might not be nominated by any organized party or group, but whom many voters would gladly support when they could do so without danger of throwing their votes away.

4. It gives the voters freedom to mark their ballots according to their real will, regardless of any candidate's expected chances of election.

5. It greatly increases interest in voting. This is because it makes practically every ballot effective in the election to the council of a person really wanted by the voter.

6. It opens within each organized group or party free competition for the seats to be won by it, depriving the

group's "machine" of all power except the legitimate power that comes from leadership.

7. It gives a seat to each sufficient number of like-minded voters whether organized or not.

8. It makes minority rule impossible. Under the Hare system a majority of the seats in the council can be filled only in accordance with the real will of a majority of the voters. The rule of the majority is by no means assured, of course, under the old ward system of election, for under that system the value of any group of votes is dependent largely on how the votes of the several groups happen to be distributed among the wards. Moreover, unless an excellent method of preferential voting be used in the ward elections, a small well-organized minority in a ward may easily force its candidate upon the ill-organized majority.

Even the above-mentioned alternative methods of electing the council at large do not insure majority rule in any such sense as that in which the Hare system insures it, for under either of those methods the voters must often consider, when marking their ballots, not only their own will but the different candidates' relative chances of election, so that many of the ballots that count with the majority in electing members are really those of voters who would have marked their ballots differently if they could have done so without risk of thwarting their will thereby.

9. The Hare system insures fair representation of all large minorities.

10. The Hare system makes for stability and continuity of policy, for under it a change of view on the part

of a small percentage of the voters cannot result in a sweeping, but only in a corresponding, change in the complexion of the council. It is believed that councils elected by this method will prove capable of developing a continuous and growing program of public policy instead of rocking violently back and forth between radicalism and reaction.

11. The Hare system makes the manager plan of government thoroughly democratic by making the council, which selects and oversees the manager, truly representative of all elements and groups of opinion.

Arguments Against the Hare System

Although a majority of the committee preferred the Hare system of proportional representation, for the election of a council, to either of the majority-plurality systems suggested as alternatives, the committee is well aware that arguments are often offered against it. Some of these arguments, with the rejoinders made by supporters of the proportional system, are as follows:

The opponents say that the Hare system tends to divide the city into factions. Its supporters, however, say that it merely condenses the city into its true leaders, and, by giving every voter an effective voice in the government, tends to secure the coöperation of all. The voting system that divides the city into factions is the majority (or plurality) system applied to the representative body at large, as in most cities governed under the commission and commission-manager plans; for under that system some of the voters may elect all the members, the others none.

Under the Hare system, the opponents say, all the councilmen may live in one part of the city. Its supporters reply that this might happen, but that it could not happen unless nearly all of the voters of the city preferred residents of that part of the city as their councilmen. Under the Hare system voters can favor near-by candidates if they wish, and a quota of voters in any locality always has it in their power to elect a local candidate.

Under the Hare system, the opponents say, there is danger that a council which represents all elements will become a mere debating society. Its supporters reply that this is not the result where the system is used. As soon as a vote is taken on an issue before the council, the decision of the majority, which prevails, can be executed just as efficiently if the various views held in the community have been voiced fully as it can if some of these views have been misrepresented or unexpressed.

The Hare system, the opponents say, tends to maintain national party lines in city elections. Its supporters reply that it gives the voters an entirely new freedom to make their will count whether they vote on party lines or not. It will, it is true, tend to weaken the dominating influence and control of party machines and bosses, but it will at the same time tend to direct party activities into their legitimate channel of formulating and promoting political principles and policies.

The Hare system, its opponents say, is too complicated. Its supporters say it is less complicated for the voter than the old single-choice plurality system, for he is relieved of any concern about any candidate's chances

of election and does not have to pay any attention to any candidates whom he does not want or does not know. For the precinct election official the Hare system is simplicity itself. The only persons who have to understand the counting of the votes are those who count them at the central electoral office. And this means, in practice, simply that one man in the city must master the count, which any capable man can do in a day, and then train in a number of clerks in connection with a practice count.

ALTERNATIVE METHODS OF ELECTING THE COUNCIL

First Alternative: Elimination Primary with Majority Election at Large

This method provides for a primary election and a final election. At both each elector is allowed to vote for as many candidates as there are places in the council to be filled. The names of the candidates are put on the primary ballot by petitions signed by a specified number of voters and filed with the election authorities. Any candidate who is voted for at the primaries by more than half of those who vote on that occasion is declared elected at once. If the required number of members are all thus elected at the primary, the second election is not held. At the second election the ballot contains the names of the candidates, other than those already declared elected, who receive most votes in the primary up to twice the number still to be chosen. At this second and final election the required number of candidates who receive most votes are declared elected.

Of course, the outstanding difference between this method and the Hare is that this method aims not at equal representation of all groups but at the election of the entire council by the majority.

Three disadvantages of this method, as compared with either of the others that we are considering, are (1) the additional expense and trouble of the second election, (2) the tendency of voters to remain away from one of the elections when two are required, and (3) the limitation on the voter's power to express an opinion on all candidates.

The advantages claimed for this system are: (1) the ballot is simple, (2) the counting is easy, and (3) the double election offers the voter an opportunity for longer deliberation in his final choice.

Second Alternative: Preferential Voting System

This method provides for nomination by petition, without a primary, and for election by means of a system of preferential or "several choices" voting. It attempts to give to the voter the opportunity of weighing the relative merits of all candidates for an office, and registering his conclusions concerning each. It also attempts to elect to seats in the council candidates acceptable to the majority, or largest possible plurality, of the voters. Model provisions for carrying out this method will be found in the appendix to the Program.

The Preferential system differs fundamentally from the Hare system in object as well as method. The object of the Hare system is true representation of all elements and all voters; that of the preferential, the true

representation of the majority or largest possible plurality. And as for method, though both systems use a preferential ballot, their principles of handling the preferences in the count are essentially different.

Advantages of the Preferential Ballot.— The supporters of this form of ballot maintain that it will more nearly insure a majority choice of candidates than will the single choice ballot. It will not always result in majority choice. Sometimes there will be no candidate upon whom a majority of the voters can unite. In that case, the candidate receiving the largest number of first and second choice votes will be declared elected if they constitute a majority; or in other cases the first, second, and other choices whether they constitute a majority or merely a plurality. Even under such circumstances the preferential ballot more nearly approximates a majority than does the single choice ballot.

The supporters further maintain that the preferential system is a sifting process. The addition of each successive choice tends to eliminate the less worthy. The preferential ballot enables the voter to register a vote against, as well as for, a candidate. The refusal to express a choice for a candidate is a vote against him. The successful candidate under the preferential system is usually the least objectionable on the ballot, if he is objectionable at all. Under the old plurality system the worst candidate often has the best chance of election because his support is usually compact and undivided, while the forces for good government are often split by the bipartisan trick of throwing into the race two or more good candidates for the purpose of splitting the vote.

Objections to the Preferential Ballot.— The chief objection advanced to the use of this ballot for the election of the council is that, in the opinion of the objectors, no plurality or majority system of any sort is suitable for that purpose: what is needed being a proportional or "condensing" system that will insure equal representation to all elements and all voters.

Objections are also made, by the opponents of this system of election, to its method of counting. It is pointed out that in making a second or other choice, the voter may, under certain circumstances, help to defeat the candidate whom he has marked with a higher choice. This imperfection results not only in limiting the confidence of the voters in the results of elections under this system but in reacting upon them to prevent their marking lower choices. Frequently the lower choices marked fall as low as twenty-five or even twenty per cent of the first choice, and sometimes they become so few as to be almost negligible. For example, in the municipal election of San Francisco in 1917, the first under the preferential system, the second choice votes numbered less than three per cent, and the second-and-third-choice votes together less than four per cent, of the first-choice votes. When the lower choices marked have no effect on the result, the preferential system becomes the same, of course, in its actual effects, as the old plurality system itself.

Two suggestions have been made to overcome this defect in the operation of the preferential system. The first one is to require the voter to mark several choices. Such a requirement is objectionable not only because

some of the voters actually do not have the number of choices that the proposed requirements would force them to express, but because it is unreasonable to require a voter to express a preference, even if he has it, when he may perhaps be afraid of helping thereby to defeat a candidate whom he has marked as a higher choice. The second suggestion often made is to grade the values of the several choices; for example to count the first choice as a unit, the second choice as half a unit, and the third choice as a third of a unit, etc. Whether or not these changes would be a distinct improvement cannot be determined without careful testing by actual experience. The hope and belief, however, of the advocates of the preferential ballot is that the voters will in time remedy the above defect by voluntarily increasing the number of second and other choice votes cast.

In spite of these practical difficulties in its operation, the preferential system is considered a satisfactory majority-plurality system by many of the communities which are using it. The verdict is not unanimous, but the system has enough support where it is used to give it a claim to careful consideration by other cities which desire a majority-plurality, rather than a proportional method, of electing the council. When the preferential system is presented to a community for its approval, it should not be extolled as the last word in election methods: it should be offered only as a method of majority-plurality election which, it is believed, will prove far better than the old plurality system.

THE VOTER'S RESPONSIBILITY

Much is said about the apathy of the voter and his lack of interest in governmental problems. While this charge is, to some extent, true, the critics of the voter have apparently failed to realize that much of this apathy and lack of interest is probably traceable to the crude electoral system and the burdensome electoral task which has been placed upon the voter in the effort to remedy existing evils. The model charter seeks to simplify the election process, assure the elector that his vote will be given its full weight, and leave to him the responsibility for his own government. When his responsibility is made clear and distinct, when his task is unconfused and free from unnecessary complications, and when he sees that he can register his opinion and will effectively, then he will begin to exercise the authority which is his in a democratic form of government. These right electoral conditions, we believe, have been provided for in this charter. Under them, an alert, intelligent, and active electorate can make its will easily effective.

VI

THE SHORT BALLOT PRINCIPLE IN THE MODEL CHARTER

American charter makers in the past, anxious to evade "politics" in administration, have often sought good government by undemocratic and devious routes. For instance: there is a scandal in the public works. A group of angry citizens rush to the capitol, get an amendment to the charter displacing the existing department head and substituting a board of public works of three heavily-bonded members appointed by the mayor for six year terms in rotation, the mayor's own term being two years. The first board appointed, following the scandal and reorganization, is a good one, selects a good superintendent and things go well. The device then, is declared a success. A few years pass, the complexion of the board of public works alters, corruption takes root, the new organization being intrinsically just as vulnerable as any other kind, and the town wakes up to another scandal only to find that it will require four years and two elections to clear out the corrupt board.

All such governmental inventions inevitably cut both ways. Many students will search this Model Charter to see what super-ingenuities we have devised on some ratchet system that can only work toward good government. They will find nothing of the sort here. They will discover that a city can easily roll headlong to the

Devil with the Model Charter. "The citizens can elect a bad council, the council can hire a crook, or the local boss, as manager, and the manager can put the City Hall in his vest pocket." No checks and balances, no veto, no charter limitations on the council's powers, no red tape except enough to compel an embarrassingly prompt and complete public display of all the facts at every stage of the progress of the City Hall toward the aforesaid vest pocket. Only in the matter of long term public utility franchises, do we provide checks to slow up and circumscribe the procedure, on the ground that delinquency in that field reacts not merely (and salutarily) upon the delinquent electorate, but upon the innocent next generation. Otherwise the voters can steer this modern automobile into any telegraph pole along the road and we guarantee simply that the car will obey the steering wheel and hit whichever pole they steer for, with a certainty and precision exceeding that of any old style loose-jointed charter. It is no legitimate function of a charter to be self-steering!

"But," insists the typical fearsome American mind, "suppose the people do get misled, as of course they sometimes do, and suppose they do elect a bad council?"

In that case, this charter provides the most fundamental of preventives against the repetition of the disaster by establishing and exhibiting a short and direct concussion between cause and effect. Their mistake brings its full consequences immediately and positively. A dog to be trained must receive his punishment or reward on the very heels of the commission of his act, so that he can see the connection.

The main message of this chapter, however, is to point out the precautions which the Model Charter takes to prevent the people from making mistakes. The unescapable hazard of democracy is not exactly that the voters may elect bad men, but that they may elect men whom they do not really want and whom they would not have selected if they had known more about them. To return to our automobile simile again, the hazard of a poor car is not that the driver will deliberately steer into the telegraph pole, but that he may hit it unintentionally because the steering gear is erratic or his head-lights insufficient in the gloom. Let me explain therefore what we have done to give the people a clear and easy view of the road, so that mistakes can only result from real recklessness. Real recklessness we believe to be rare. It is an old fashion for reformers to shrug their shoulders over bad political conditions and remark that "the people have only themselves to blame," but it is not usually true, for under our old style charters there are myriad contributing causes. Those contributing causes we have stripped away. If government goes wrong for any considerable length of time under the Model Charter, it will really be fair to blame the people.

The way to keep the people from electing men whom they really do not want is to have them elect only a few at a time, so that the people will get a good square leisurely look at every one of them. In foreign democracies, England, for instance, the voter's task at election time is simply to choose one man from a field of two or three to be the municipal councilor for the ward. The British

voter gets to know his candidate and votes with the sane clear-cut convictions that an American voter does when he votes for president of the United States. One issue to decide, one mark to make on the ballot, and the voter is through for the year! Such a vote is not easily controlled by the politicians, or muddled by oratory, or confused and misled by partisan symbols.

We in America have departed far from such primitive simplicity! Our long and miscellaneous list of elective offices baffles, encumbers and entangles the whole elective process. It disfranchises the ordinary work-a-day citizen by the simple expedient of making politics too complex for him, with his scanty leisure, to master. The remaining five or ten per cent of the citizens, who for one reason or another choose to live and work in the political arena, acquire a rarely-disturbed control of the government. An outraged citizenry may sporadically "rise in its might and majesty" and invade the caucuses, conventions, primaries, etc., which constitute the devious lair of the professional politicians, but the politicians know that these meddlesome citizens cannot stay long and must soon return to their usual vocations and avocations. Whereupon the politicians — our modern ruling class — will resume their interrupted sway. The old remedy, "Let all good citizens go into politics," was sound in theory, but unworkable in practice, for a wholesome citizenry has much else to do. The new remedy is to bring politics to the citizen by making politics so simple and easy that every citizen will play his full part without conscious effort, leaving no mesh of detail to give footing to the politician.

The Model Charter does not reduce the number of offices on the ballot to one, as in England, but it carefully keeps the ballot very short. Only members of the council are elective, no separate mayor or clerk or treasurer or the like to be elected.

The council may be of any size from five to twenty-five, provided that the ballot is somehow kept short and popularly intelligible. The limit per ballot is five offices. If you want a council of fifteen, for instance, elect five at a time in rotation. Or divide a city in wards and choose five or less from each. Or, best of all, adopt our proportional representation option, wherein the voter votes for one with a series of secondary choices. His Majesty, the voter, has a delicate appetite. Thrust upon him more than he cares to eat and he may thank you for it, but he will go off and leave the surplus and the politicians will wax fat thereon.

A corollary of the Short Ballot principle that the number of officers to be chosen at any one election must be few, so as to permit adequate and unconfused examination of the candidates, is found in the further necessity that the elective officers must be of enough importance, both absolute and relative, to secure and deserve effective scrutiny by the voters. *E. G.* if at a given election the ballot carried only the office of coroner, the people would not bother to go to the polls. Quite rightly too! A citizen ought to be about better business than determining his insignificant share of that petty question. Or if the offices on the ballot were simply the mayor and coroner, the people would be drawn to the polls by the mayoralty contest, but their votes for the coronership

would be so indifferent and half informed as to be an empty, meaningless formality rather than a genuine plebiscite. Many city charters provide ballots that are short as to actual number of offices, but suffer because some of the offices are little overshadowed offices that inevitably escape the public scrutiny necessary to the maintenance of healthy conditions.

In our Model Charter this pitfall is avoided. The councilors who alone are elective are all of equal and high importance. This is to be no ordinary city council — it is the supreme board of directors of the municipal corporation, a post of great opportunities for good or ill, subject to no veto, free from red tape, master of every power within the city's scope; a board of mayors, so to speak. The councilors are the head of the ticket and the tail of the ticket — the whole ticket. If elected by wards they may confidently be expected to tower above the petty sectionalism of present ward-elected councils in the mayor-and-council plan, for the littleness of the old style councilor was based not on the littleness of his ward, but on the littleness of his job in the city government. Strong men won't accept the nomination to an old-style council; the fact that they have only a ward to canvass will not prevent them from accepting the nomination to this new post of real honor.

The Wieldy-District Principle[1]

The application of the Short Ballot principle is enough to cut off both the function and the sustenance of the

[1] See article on "The Principle of Wieldy Districts," by Mr. Childs, in the "Proceedings of the Buffalo Conference on Good City Govt.," page 340. C. R. W.

political machines in small cities, leaving them only the diminished fare of county and state offices and a morsel of pork from the federal barrel. A multitude of experiences in commission-governed cities supports this expectation, although of course so long as other jurisdictions serve to keep it alive, the machine continues as a menace and sometimes manages to triumph. The story of commission governments in hundreds of minor cities is a story of political clubs dying out, machine headquarters getting forlornly empty, bosses losing influence and professional politicians going to work.

In the large Short Ballot cities,— St. Paul, Boston, Cleveland, Buffalo — the machines retain an important opportunity and continue to be so useful to their candidates that the machines survive.

Election in these cities is at large, and the electoral district unit is the whole city. This makes a district so large that an intermediary is needed between the electorate and the candidates. A candidate, unless he happens to be owner of a newspaper, like Hearst, or a millionaire, cannot readily come out for office and introduce himself to a million people single-handed. He must have an organization to do such wholesale work. Can he improvise one big enough and quickly enough? And if by sheer energy he can, who will pay the bills? Grant that he can manage it after a fashion, here comes the old political machine, its workers drilled, its ramifications complete, its organization experienced, its finances drawn by roundabout devices of patronage from the spacious city treasury. Will he make a treaty with it and thus get its help?

Forthwith he is its grateful servant. Will he fight it? It will beat him without half trying.

In Boston, for instance, the candidates nominate themselves by petition and the campaign opens. Canny reporters hang around the doors of the local good government league, the Republican city committee and the Democratic city committee. The league endorses Smith, the Democratic commitee says a kind word for Jones. Forthwith it is a duel. Smith and Jones become the only candidates worth considering. A vote for other candidates will be wasted and they drop out of the running. Smith and Jones each find a little well-financed standing army campaigning on their behalf. After election is it not dangerously like that Smith (or Jones) considers himself deeply in debt to that obscure little standing army and its captains, whose nod made all the difference between success and failure? So the government of Boston becomes a joint affair with control divided between the rank and file of the people, on the one hand, and a compact group, or groups, of self-constituted leaders on the other. Even if both the league and the Democratic committee be at present entirely controlled by high-minded unselfish men, such private groups holding the real though informal monopoly over hopeful nominations, are an undemocratic phenomenon, fraught with insidious danger. And if the people of Boston should acquire a distrust of both these nominating powers, they can do little about it except to create and support a new one!

Such is the unwieldy district. The principle runs far through our political life. It has done much, for in-

stance, to upset the workings of direct primaries in statewide elections.

By a wieldy district, we mean one small enough to permit really free competition for the elective office, small enough so that any suitable private citizen with an ordinary citizen's resources of acquaintance and money can canvass it adequately with the aid of such temporary organization as he can hastily improvise for the purpose. In such a district there will still be a machine perhaps, but its nominations, if unsatisfactory, will be subject to a very real danger from latent competition.

Chicago furnishes the best example of the value of such wieldy districts, in its aldermanic elections. These elections come separately — only one man to elect — and the districts are small and compact. Aided by the information of the voters' league, which rings the alarm-bell on due occasion, the citizens of Chicago have in numberless cases demonstrated the effectiveness and reality of latent competition under such circumstances. Thereby they have chased politics out of the board of aldermen, made it the one good board of its sort in America, and established, so far as this branch of their government is concerned, the most stable popular and good government to be found among our large cities. If the politicians could change the aldermanic election back to an obscure place on the long list of forty to fifty offices that grace the typical Chicago ballot at its general elections, and elect the aldermen at large or from much bigger districts, they would instantly recover complete control, such as they have in the case of the mayor and the county offices.

In small cities, election-at-large, if the ballot be short,

does not violate the wieldy district principle. Mr. MacVicar of Des Moines, for instance, without organized help and against organized opposition, canvassed the city for himself and won the highest vote at a total cost of six dollars.

The size-limit of a wieldy district is not determinable with any precision. A homogeneous city of 100,000 is probably not too big for election at large, but a district of no natural unity embedded in a big city should be smaller than that — say 50,000, although that is a guess. In cities over the million class, that would be inconsistent with our desire to keep the council down to twenty-five members as a maximum and some kind of balance must be struck between the two principles.

Our goal is democracy. In the Model Charter that means a council composed regularly and entirely of members who enter office under no obligations to any private political authorities for their election, whether it be a political machine, a ring, a boss or a reform league, but who have been able to deal solely and directly with a free people.

On the stable democracy of such a council, efficiency can be boldly and swiftly developed.

VII

ADMINISTRATIVE ORGANIZATION

As the distinguishing characteristic of the form of city government advocated in the New Municipal Program is to be found in the concentration of administrative powers and responsibilities in the hands of a city manager, it is eminently fitting that the portion of the charter dealing with the administrative service should begin with a consideration of the manager, himself. Indeed, the initial sentence of this portion strikes the keynote of the entire administrative organization by declaring that the city manager shall be *the chief executive officer of the city*. It is true that this declaration in and of itself may mean much or nothing. Similar declarations are to be found, for instance, in nearly all of our state constitutions, and in many city charters of the mayor and council type. It is a matter of common knowledge, however, that our state governors are in no real sense the chief executive officers of the state in spite of the constitutional declarations to that effect, and that in most cities under the mayor and council form the mayor exercises a part only and not always by any means the major part of the executive powers of the city government. The trouble, therefore, has been in the past that the constitutions and charters, after making a declaration of a sound principle of governmental organization, have nullified that

declaration by the distribution of functions actually made in the organic law. Fortunately, as will be seen, the New Municipal Program lives up to its confession of faith in this regard and the opening declaration as to the position of the city manager is a promise that it is fulfilled in the working out of the details of organization.

The city manager is to be chosen by the council solely on the basis of his executive and administrative qualifications. This departure from American political traditions involved in making the executive head of the government appointive, instead of elective, is epoch making. That the appointment of the city manager should lie with the council, the elective representative governing body of the city, would seem to be self-evident. There are, of course, other possible ways of choosing the city manager, but merely to name them is sufficient to realize their undesirability. To have the city manager chosen by some other local body, for instance, if such were provided, would be to strike at the fundamental principal of efficient governmental organization upon which both commission government and the commission manager plan are based, namely that there should exist a complete coördination and harmonious interrelation between legislation and administration. To have the city manager appointed by some central authority, on the other hand, such as the governor of the state, would not only preclude the possibility of responsible government by the council, but would be destructive of the most essential principles of home rule.

That the city manager shall be chosen solely on the basis of his executive and administrative qualifications

would seem to be so obvious a consideration as not to require incorporation into the charter. Unfortunately, however, American political experience has taught us that no principle has been more consistently violated in our governments than that persons should be appointed to public office because of fitness for the office, and not because of political considerations. It is the almost universal disregard of that indispensable principle that makes necessary the incorporation of civil service merit provisions discussed in another chapter of this book. As a direct statement of an essential consideration in the filling of this important post the requirement under discussion is practically indispensable. As an effective provision for insuring that the consideration will have due weight in the actual choice of a manager it is unfortunately of little legal value, as the charter provides no way of enforcing it. To limit the council in its choice of the manager by definite requirements enforceable in a court of law would indeed have been quite possible, but not, on the whole, desirable. What would have been gained by the sanction of legal process would, it was felt, have been lost by the possibility of bringing up a legal controversy over the appointment of the manager by disappointed candidates or enemies of the council. For that reason the statement was left advisory rather than mandatory in effect.

Even more purely advisory and suggestive is the declaration to the effect that the choice of the city manager shall not be limited to inhabitants of the city or state. The idea that public offices, both elective and appointive, should be reserved for local men is as typically American

as is the principle of the spoils system. In the case of such an office as that of city manager it is especially important that local residence be not taken into account, for the training and qualifications needed for a good city manager are such that in smaller cities especially it will frequently be impossible to find a suitable candidate. Furthermore, local men are almost sure to enter such an office with personal friendships and enmities of long standing, both of which might prove serious handicaps in the proper performance of their functions. What the native son, therefore, can adduce in the shape of a knowledge of local conditions will frequently be more than offset by local connections which may make it more difficult for him to profit by that knowledge. Other things being equal, therefore, a city council would do well to favor the candidate who is without a local past. Certainly the negative declaration contained in the provision under discussion is desirable as calling attention to the advisability of considering outside candidates, and the footnote commending the practice of publicly advertising for candidates suggests a way of increasing the likelihood of such candidates coming to the attention of the council.

The salary of the city manager is not specified in the charter for, of course, that will have to vary with the size of the city. At the same time it should be emphasized that the great possibilities of the city manager plan of government will never be realized unless adequate salaries are paid; that is, salaries that will attract men of the highest caliber. The qualifications that fit a man to be an efficient city manager are the same as those that fit him for success in business administration and the sal-

aries must obviously be at least comparable to those paid to successful administrators in private business. Of course, the great possibilities for community service in the position of city manager will attract high-minded men from even better paying positions in private activities, and the dignity and influence which the chief executive office in the city carries with it will permit of a somewhat lower salary scale than that applied to men in private undertakings. But the discrepancy must not be too great or we shall, as usual in our governmental activities, be trying to do a first class work with third rate men, and the result will be a disappointment to every one interested in improved city government. The citation of the example of Dayton, a city of 117,000 inhabitants, paying its manager $12,500 a year serves to indicate what would seem to be a fairly liberal basis. It is said that Dayton was willing to pay even double that salary had it been possible to get a certain man of world-wide reputation as an administrator.

Charters should not specify the salary to be paid, but should set a liberal maximum, leaving it to the council to get the best man within the limit set.

The appointment of the city manager is to be for an indefinite period, which is intended to mean during good behavior. The other alternative was to make the appointment for a definite period, a term of years, with, of course, the possibility of terminating his employment at any time that his services were found to be unsatisfactory. The superiority of the indefinite term of appointment would seem to lie in the fact that if the city manager has to be reappointed at periodic intervals his enemies

(comprising, of course, those who want the place for themselves or their friends) can concentrate their attacks upon the office at those strategic times. A majority being required to reappoint, there is greater likelihood that the incumbent will lose his place as the result of political intrigue, than if a majority vote is necessary to oust him, as is the case when the appointment is for an indefinite period. By the same token, however, it must be said, it might be more difficult to get rid of an incompetent or incapacitated city manager under the indefinite term than under the other arrangement. On this point opinions are divided and it can hardly be said to be a fundamental matter.

Of vital importance, however, is the next provision, which states that the city manager shall be removable by the council. One of the commonest objections urged against the city manager plan is that it is bureaucratic or autocratic instead of democratic. Were the city manager in any way independent of the representative body of the city, were it possible for him to disregard the wishes of the council with impunity, there would be considerable truth in the charge that we are setting up a one man government for our cities. It is essential, therefore, in order to avoid this serious charge and in order to insure absolute responsibility by the administration to the elected representatives of the people, that the city manager be at any time and for any cause, removable by the council. It has been urged that to let the dismissal of the city manager rest with the caprice of the council would be to discourage competent men from entering into such positions, and that therefore some limitations should be inserted in

the charter to protect the manager from removal upon improper grounds. To this it must be replied that no considerations equal in importance the necessity of having absolute accountability by the manager to the representative body, and that the insertion of any sort of limitations enforceable in the courts would be to strike at the very root of the proper relation between council and manager.

Is there no way then in which the council can be held responsible to the people for the *abuse* of the absolute power of removal which it must have with regard to the manager? Obviously the only way to insure such a responsibility is to make certain that if the council is acting arbitrarily, the arbitrary nature of their action shall be made manifest. This can be done by providing that the city manager may demand written charges and a public hearing on the same, prior to the time that his removal is to take effect. The requirement of written charges insures that specific grounds shall be alleged, and the requirement of a public hearing insures that a defense to these charges may be made before the public.

It is true that these requirements in no way interfere with the removal of the manager by the council upon trumped up, ridiculous, or unproved charges. It does, however, provide a means whereby the manager may clear himself of blame, and the public may have means of learning how their representatives are discharging the solemn responsibility of getting and keeping good men in the position of manager. Obviously, if the public is alive and interested in that question, the necessity of written charges and a public hearing cannot but have a most beneficial moral effect upon the council. The provision

that such written charges and public hearing may be demanded only after six months of service has the effect of making the first six months a purely probationary period, such as is provided in the case of appointments under civil service merit rules and regulations.

Section 35 of the charter, dealing with the powers and duties of the city manager, contains the provisions which give effect to the opening declaration that the city manager shall be the chief executive officer of the city. To the end that the city manager shall be really responsible for the proper administration of all affairs of the city he is given power to make all appointments, except as otherwise provided in the charter. Were it not for the exception qualifying this grant of the appointing power we could say that in the fundamental matter of filling the administrative offices of the city, the city manager had been given complete responsibility. As, however, provisos and exceptions not infrequently operate to annul previous general provisions, it will be necessary to see to what extent the charter provides otherwise before the full meaning of the grant of the appointing power to the city manager can be understood.

In the first place, the civil service board is not appointed by the city manager. The reason for this exception is obvious. This board being provided for the purpose of regulating and controlling, among other things, the manner of appointing persons to the classified service of the city, should not be appointed by the person whose appointing power is to be controlled, namely the city manager. In the next place the council is to appoint auditors for the independent auditing of the accounts of the city offi-

cers. Here again the reason for the exception is plain, being the same as existed in the case of the civil service board, viz., that officers of supervision or inspection must not be selected by the authorities to be supervised or inspected. These two cases are the only instances of municipal officers whose appointment is not lodged in the hands of the city manager. They constitute slight, but very necessary exceptions to the general rule.

Of much more significance, however, as a limitation upon the administrative power of appointment, than the two exceptions noted above, are the provisions dealing with the civil service board. The reasons for introducing these limitations and the manner in which they operate are fully discussed in the chapter dealing with the civil service provisions. It must be pointed out, however, that they constitute very important limitations upon the power of appointment here under discussion. All positions and employments in the civil service are made subject to the limitations imposed, excepting the councilors, the judges, the directors of departments, and superintendents, principals and teachers of the public schools. The four classes of officers last named may also be included in the service to which these limitations apply, if so directed by the council.

Now what is the character of these limitations upon the appointing power of the city manager? Briefly stated, they limit him in the matter of appointments to selecting one of the three highest candidates on the eligible list for any given position. Now courts have held that to limit an officer to whom is entrusted the appointing power to the selection of the highest candidate

on such an eligible list is to deprive him of the appointing power because no discretion is left him. In the same way it is obvious that to limit him to three candidates for a place is to impose a very serious restriction on his power of appointment. What is true of the administrative power of appointment is equally true of the power of making promotions. This is a most important part of the administrative power, but is also restricted by the provisions relating to the civil service rules in such a way that the city manager is not left free to make promotions at his own discretion.

The other fundamental administrative powers in connection with the personnel of the service, namely, the power of discipline and removal, are not so limited, but are left to the city manager and the department heads under him, with the single requirement that the reasons for such action be furnished the person affected in writing and that he be given a reasonable time to reply in writing. As the power of discipline and removal is a more important administrative power than the power of appointment, it is fortunate from the point of view of giving effect to the responsibility of the city manager for the proper administration of the affairs of the city that he enjoys this power practically without limitation.

Taking up now the second part of section 35 we see a provision that the city manager shall be entitled to be present at all meetings of the council and of its committees and to take part in their discussions. The importance of this is to be found in the fact that successful government elsewhere has been the result of continued consultation between the governing body of laymen and

the expert administrative officials. In European cities, as in America, the council is composed of laymen; but the council and its committees there do not take any important action except in consultation with the administrative experts. Many a proposal that is promising in theory presents well-nigh insuperable technical or administrative difficulties, and many a measure that seems on its face to offer little promise may be most desirable from an administrative point of view. To give proper weight and consideration to both points of view it is highly desirable that the chief administrative officer of the city be heard on every important matter that comes up for decision. Of course he does not have a vote in the council, and his opinions when given need not in any way be taken into consideration by the council in its action, but unless a provision of this nature is inserted in the charter a city council will be very likely to think that the city manager has no business in council meetings unless his presence is expressly requested. Since the charter gives the city manager the right to written charges and a public hearing before removal, it is quite proper that the council be permitted to discuss this one matter in his absence.

Section 36 imposes upon the city manager the duty of preparing the annual budget on the basis of estimates made by the directors of the departments and submitting it to the council. As the detailed provisions with regard to the character of the budget and its manner of presentation are included under another head and will therefore be discussed in a different chapter, these matters will not be taken up here. It is sufficient to point out that the

preparation of the budget is a matter of considerable administrative difficulty, and should therefore be entrusted to the person who has continuous, first hand contact with all of the activities of the city. The lack of budget provisions in our state and national systems of government has long been properly decried as one great cause of inefficiency and extravagance. It is the more necessary in city government where the expenditure per capita is greater.

The preparation of the budget which is entrusted to the city manager is not, however, wholly a matter of finance administration. On the contrary it involves the expression of municipal policy for the coming year because almost all important measures involve expenditure of money, whether they be new undertakings or improvements in existing services. It is for that reason that an ideal city manager must be more than a first class executive, fundamental as that requirement is. He must be a man of broad vision and extensive training in the social sciences if he is to live up in the fullest measure to his possibilities and responsibilities. It is in the preparation of the budget more than in any other duty that he must show himself a leader, formulating policies and urging their adoption by the council. Therein, of course, lies also the danger of his becoming a political issue, a danger that can be guarded against only by tactful modesty on his part in keeping out of print and off the center of the stage. However, that is another story.

Coming now to a consideration of the administrative departments, we find the charter providing for six administrative departments: Law, health, works and utilities,

safety and welfare, education, and finance. The division of the work of a city into departments presents no little difficulty, and presents also a possibility for varying opinions. Most city charters of whatever type have been especially weak and illogical in this regard, and have commonly adopted a division that could not well be justified from any point of view. The first consideration to be kept in mind with regard to such a distribution is that it is merely a matter of convenience and should be looked at from that point of view solely. The work of administering a city is an entity, a very complicated entity it is true, but nevertheless an entity. It is impossible, therefore, to adopt any kind of a division into departments, no matter how minute, which will make the individual departments separate and unrelated to each other. It is because of this fact that the single administrative head provided in the city manager is so fundamental a necessity for efficient city administration. It is the overlooking of this fact in the organization of the ordinary commission government which has been largely responsible for the failure of that form to attain a higher standard of administrative efficiency. The individual commissioners as department heads have been too prone, naturally and almost inevitably so, to regard their own departments as distinct fields of activity to be administered with respect to themselves alone, without proper regard for the interdependence of all the departments.

Under the city manager plan, providing as it does a central authority to coördinate the work of all the departments, it is no longer necessary to attempt the impossible in trying to divide the work of the city in such a

way that each department can be run without reference to the rest. It is necessary only to adopt such main departments as will unite the activities most nearly related and most clearly distinguished from the other activities, and will demand a knowledge and training on the part of the director differing essentially from that demanded for the other departments. It is well to point out that the danger in the administrative organization of the city, or of any other governmental unit, either, for that matter, lies in the useless multiplication of departments. This is a danger which has made itself felt not only in the United States but in European governments as well, and its basis there as here lies in political considerations. The continual increase in the size of the British ministry, for instance, and especially of the cabinet, has been clearly due to political considerations, for each new cabinet post created gave the opportunity for rewarding more party leaders with posts of responsibility and honor, with little or no regard to the requirements of efficient administrative organization. In France still more, where the multiplicity of parties and the necessity of coalition governments demand a maximum number of cabinet posts as rewards for party support, the number of cabinet positions has been continually increasing with primary emphasis on the political rather than the administrative side. Other examples might be cited, among which must not be omitted the federal government of the United States. Every new cabinet position created makes one more berth for a loyal party supporter and the number of departments has increased from five in 1789 to ten at the present time. The same

considerations have prompted the unnecessary increase of departments in our cities, for whether those department heads were elective or appointive the dominant political party enjoyed just that much more valuable patronage. It is worth noting, moreover, that while ten departments are considered sufficient to administer the affairs of our national government, most of our larger cities have found it desirable to exceed that number. Boston, for instance, had thirty departments, for the reason, as Professor Munro states, that for many years heads of departments were about the only higher administrative officers exempt from civil service regulations and new departments were frequently created by ordinance to provide for political spoilsmen.

An examination of all the different functions to be performed by the city would seem to lead naturally to a division into the six departments enumerated, on the basis of approximate inclusiveness and exclusiveness of functions and the training required of the department head. The legal work of the city, for instance, including the giving of legal counsel on all matters that arise, the drafting of ordinances in accordance with legal powers and to accomplish the desired ends, and the representation of the city in civil and criminal suits is quite distinct in character from the rest of the work of the city and demands at its head a man who has had a thorough legal training. The acquisition of a thorough legal training demands to-day about all of the time any man has for acquiring education and professional training and would leave little opportunity for a man thoroughly prepared for that work to become sufficiently familiar with the

work of any of the other departments to undertake their immediate direction. The same considerations apply to the work of public health which demands a trained sanitarian; of public education, which demands an educational expert; of public works and utilities, which requires engineering training of a broad and thorough kind; and the work of public finance, which involves training as a professional accountant and expert on public finance. The remaining department, that of public safety and welfare, may on its face present less of a logical entity than the first five named departments. A moment's consideration, however, will show the close connection between the function of police protection and of social welfare activities. The neglect of social welfare activities in a city, such as proper housing, recreation facilities, charities and corrections, has a most immediate effect on the necessity of police activities. Indeed, social welfare work may from one important point of view be regarded as the positive or preventive side of police administration. For that reason the activities of preventing poverty, vice, and crime must logically go hand in hand with the activities of dealing with their manifestations. Consequently a well trained director of public safety should be a thorough sociologist as well, and the two phases of this activity should be under the direction of the same person.

It is believed that there is no activity of the modern city which cannot logically fall within one of these departments. It is true that there are many activities which partake to such an extent of the character of functions found in two or more of the departments that they

might properly be placed in any one of them, but in such cases convenience will dictate the distribution to be made and the general logic of the scheme will not be destroyed. This power of determining in detail the functions of the various departments is expressly left to the council, by the charter.

The charter does indeed confer the power on the council of creating new departments, combining or abolishing existing departments, or establishing temporary departments for special work, and the footnote to this sentence suggests the directions in which such departures from the organization provided might best be made. But the general inadvisability of making such changes except for very good reasons is reflected in the requirement that a three-fourths vote of the entire membership of the council shall be required to make such changes. This safeguard is intended to resist the temptation to multiply departments unnecessarily for political reasons, particularly if the directors of departments are not put under the civil service regulations governing the classified service. The writer is personally of the opinion, however, that as regards the increase of departments the mere increase in the size of the city should never be regarded as a proper reason for multiplying the number of departments. The growing complexity of the department administration may properly demand sub-divisions into bureaus under the department heads; but if our analysis and grouping of functions were sound such increasing complexity would not demand new departments. The city manager must keep a watchful eye on the entire administration of the city through the department heads

and his task will be simplified by having a minimum number of individuals to deal with. If the task of looking after the entire city administration in a general way is not considered beyond the possibilities of one man, surely no one of the single departments outlined would grow beyond the power of an efficient department head to direct. There would never appear to be, then, a necessity for increasing the number of departments beyond six.

The possibility of reduction in the number of departments and combining the functions of two or more, rests, however, on a clear necessity. In cities of the smaller class, in which the city manager plan is making its chief advances at the outset, it is obvious that the expense of retaining six expert administrators as department heads in addition to the city manager would be wholly unjustified when there is neither money to pay them nor work to keep them busy. In such cases the number of departments must of necessity be reduced, and the footnote suggests the logical way in which this is to be done.

One other matter remains for consideration in connection with the creation of departments. Although the department of education is enumerated as one of the regular city departments, a footnote declares that in places where the school system works well under a separate organization it had better not be disturbed. This declaration rests clearly on the doctrine of letting well enough alone. As a matter of administrative principle there would seem to be no reason, the writer is here again voicing his personal opinion, for excluding the administration of education from the general administrative organization of the city that would not apply with equal

force to any one of the other departments of city work. The territorial jurisdiction of the educational authority is identical with that of the city, and the same persons are to be served, and the same property is to be taxed as in the case of public health, safety, works or any of the other departments. With equal reason, therefore, could the friends of public health administration, or of parks and playgrounds, or of libraries, water works, or what not, insist that these matters should be entrusted to separate authorities for their better administration. Indeed that is just what we are escaping from and trying to avoid under the city manager plan. We have been laboring for decades under separately elected health boards, library boards, park boards and other administrative authorities. This scattering of administrative authority has been generally deplored by students of municipal administration, and the concentration of these activities under the strong mayor type of mayor and council government, and even more now under the city manager plan has been welcomed as meeting a fundamental prerequisite of efficient administration. Certainly educational administration is no more independent or unrelated to the other work of the city than is public health, for instance, is no more vital to the welfare of the city, and is therefore no more entitled to be treated differently than the latter. In England, in Germany and in France educational administration is a function of the city council, not of a separate authority. In the United States, moreover, the beginnings of public elementary education were inaugurated by imposing the duty of providing it upon the town governments, not upon separate authorities.

The development of separate independent school authorities was due mainly to the general multiplication of elective authorities in our cities in what was believed to be the democratic movement during the early part of the nineteenth century. The argument in favor of keeping them separate from the general city administration today rests on the contention that educational matters are too important to be allowed to "become involved in municipal politics." Even supposing that independently elected school authorities insured the elimination of improper politics in the administration of school affairs, what argument can be advanced in favor of entrusting such important matters as public health and social welfare to a city government unfit to handle the educational problems of the community? The whole opposition to entrusting educational administration to the city council rests therefore on the hypothesis that this council will be inefficient, if not dishonest and corrupt; and that schools, at least, should be saved from their pernicious control. If we grant the soundness of that hypothesis, and of the further one that independently elected authorities for separate branches of administration will be more satisfactory than the union of municipal powers in the hands of a single body, how can we consistently advocate commission government and the city manager plan? In my opinion, therefore, logic and consistency demand that the inclusion of education in the general administration of the city be strongly advocated, instead of suggesting, as does the note in question, that matters had better not be disturbed.

The directors of departments are to be appointed by

the city manager. If the city council should make use of its power to include the directors of executive departments in the standardized and classified service, then the provisions with regard to appointment to office in that service set forth under the head of the civil service board and briefly considerd above will apply also to the selection of department heads. If the council does not take such action the department heads are to be chosen by the city manager at his discretion, subject only to the limitations expressed in section 38 of the charter. These provide that each director shall be chosen on the basis of his general executive and administrative experience and ability and of his education, training, and experience in the class of work which he is to administer. This general principle of selection is made more specific in the following requirements that the director of the department of law shall be a lawyer; of the department of health, a sanitary engineer or a member of the medical profession; of the department of works, an engineer; of the department of education, a teacher by profession; of the department of safety and welfare, a man who has had administrative experience; and of the department of finance, a man who has had experience in banking, accounting or other financial matters. As a general alternative to these specific requirements is the provision that the man must have rendered active service in the same department in this or in some other city. Obviously these requirements are to be considered in the light of minimum qualifications, not as satisfactory standards of fitness. Among all applicants or candidates showing at least these attainments the best

equipped is to be chosen, whether or not they are submitted to the competitive tests of the civil service board. The director of the department of law should, of course, be a lawyer. But he should be more than that. He should be a lawyer especially versed in constitutional and municipal law, and skilled in the science of ordinance drafting. The director of the department of health should be more than a mere sanitary engineer or a mere member of the medical profession. He should be an expert in all the problems of public health, of which neither sanitary engineers nor doctors ordinarily have more than a smattering of knowledge. The director of education should be more than a mere teacher. He should have demonstrated his grasp of educational problems in the largest sense. The requirement with regard to the director of the department of safety and welfare means practically nothing. In practice he should be a man with university training in the social sciences. Administrative experience, and more than that, proved executive ability, with all that that implies, must of course be understood as an implied prerequisite to the headship of any department, although the head of the department of public safety and welfare may have a larger force of men and somewhat more difficult administrative problems on his hands. It is obvious that a director of finance should have had experience in accounting and finance administration. But a city that would be willing to permit any man who merely came up to the minimum requirements as set forth in this article to serve as head of a department would surely be disappointed in the outcome. The alternative requirement

that the man must have rendered active service in the same department of the city or of another city is intended to insure only a minimum of practical acquaintance with the problems of administration in that department. As a matter of fact in the majority of cases today the man who could satisfy this requirement would be lacking in the broad training so necessary to the best accomplishment of his important functions. This alternative must therefore be considered in the light of a futurist requirement, looking ahead to the time when the subordinate officials of administration will have been properly trained to take their places as heads of departments after proving their administrative qualifications. The specific qualifications enumerated in the second half of the first paragraph of section 38 must therefore not be regarded as setting up a satisfactory standard for those positions.

The directors of departments are made removable by the city manager at any time. We have already pointed out that to charge an administrative officer with responsibility for the acts of subordinates whom he cannot remove, and consequently cannot control, is unjust and ineffective. But in case of removal of the department heads, as in the case of the removal of the city manager himself, it was felt desirable to provide some safeguard against purely arbitrary action by assuring the officer of the right to written charges and a public hearing. There would not seem to be quite the same necessity for such a provision to guard against arbitrary action by the city manager as was necessary with regard to his removal by the council. The responsibility of the city manager to the council for his acts in this regard as in all others is

direct and complete, and he may be called to account at any time for an abuse of the removal power. The responsibility of the council to the public on the other hand is necessarily somewhat diffused and could be greatly obscured if the requirements for written charges and a public hearing were not insisted upon. But for the purpose of aiding the council in its judgment of any controversy between the manager and the head of a department resulting in the removal of the latter, the requirements that the charges and the director's reply thereto shall be filed with the clerk of the council are worth inserting.

The directors of departments are expressly made immediately responsible to the city manager for the administration of their departments, and he may require their advice in writing on all matters affecting their departments. It has been seen that the work of directing any one of the six departments is of a nature to require for its proper accomplishment professional training in that particular field. It is obvious, therefore, that the city manager cannot, in the nature of things, be a technical expert in more than one or at most two of the departments. In the conduct of the other departments he must consequently, in strictly technical matters, rely upon the expert advice of his departments heads. Without such advice the city manager, in any large city at any rate, would be hopelessly at sea and with the best of intentions would make the most serious of mistakes. That he should be able to require this advice is therefore most necessary, and that it should be in writing is important, both for the sake of insuring clarity and of providing him with in-

formation which can be kept continually on file and used as occasion demands.

Quite as important for the city manager as advice from his department heads is the necessary information on which he can base his own opinions. Formal reports at stated intervals are important, but even more valuable are reports on particular activities furnished upon request of the manager for special purposes, and it is well to grant the power of demanding such reports in the charter itself. In the work of making up the annual budget the departmental reports and estimates are, of course, the starting point on which the city manager bases his own recommendations to the council. For that reason a special section is devoted to the manner of preparing the budget under the head of financial provisions.

The last section under the head of the administrative service confers upon the council, the city manager and any officer or board authorized by them, or either of them, the power to make investigations as to city affairs, to subpœna witnesses, administer oaths and compel the production of books and papers. So far as the granting of this power to the council itself is concerned, the reason and necessity are obvious. Almost equally important is it, however, from the administrative point of view, that administrative acts and decisions which are so often dependent upon the obtaining of information that cannot be gotten without the application of compulsion, should be available to the city manager directly or through his subordinates by the means granted in this section.

To epitomize the provisions of the charter with regard to the administrative service, it may be said that they give

the fullest possible recognition to the principle of administrative centralization. Every employee in the city is subordinate and responsible to some official, every subordinate official is in the same relation to some superior, every department is under the charge of a director and every director is in every way subordinate and responsible to the city manager. There is the administrative pyramid in desired perfection, incomplete only to the extent that the civil service provisions of the charter break the chain of complete control in the interests of preventing the abuse of the administrative powers of appointment, promotion, discipline and removal. Lest there be the slightest suspicion of our having erected a bureaucracy in creating the administrative hierarchy, the apex of the pyramid, the city manager, is made absolutely and completely subordinate to the city council, the elective body representing the people of the city.

It would not be proper to close a consideration of the administrative provisions of the charter without calling attention to the provisions of section 3 of the charter, which, though entitled "Powers of the Council," contains limitations on the dealings of the council and its members with the city manager that are of fundamental importance for the successful administration of the city under this plan. These provisions are discussed elsewhere. It is sufficient to emphasize here their prime importance in relation to the administrative service.

VIII

THE COUNCIL

In all branches of government, as President Goodnow pointed out in the Municipal Program of sixteen years ago, there are two primary functions to be performed. First, there is the general function of determining in a broad way what the public policy shall be, and, second, there is the function of executing this policy or carrying it into effect after it has been determined. The former we usually call legislation, the latter administration.

In American government, whether national, state, or municipal, it has been a generally accepted doctrine, moreover, that these two functions should be placed in separate hands. Congress is the policy-determining branch of the national government; but the work of national administration is devolved upon the president and upon the heads of the various executive departments who are appointed by him. The several state legislatures in their own sphere determine the course of state policy; but the governors and the heads of the state departments are intrusted with the function of carrying this policy into effect. In the American municipal system, taken as a whole, the same division of functions has been recognized. The city council has been the policy-determining organ of the municipality; the mayor and the heads of the city departments have been the custodians of administra-

tive authority. The doctrine of division of powers, of checks and balances, has thus permeated every branch of American public life.

This principle, furthermore, did not stop with the mere functional division of powers. Its full recognition has required an organic division, in other words it has demanded that not only shall the policy-determining and the administrative authorities be separate, but that they should be independent as well. In short, it has meant that neither shall be subordinate to the other, but that each shall have its own orbit and be supreme within it. As applied to municipal government, however, this complete separation was not made at the outset; from colonial times down to about the middle of the ninteenth century the city council was not only the policy-determining organ in American municipal government, but possessed much authority in administrative matters as well. As the cities grew in size and importance, with increased administrative work to be done, the various committees of the city council became more important. The control of the police, fire protection, water supply, and other departments went virtually into the hands of these various committees, each doing its work subject to the authority of the whole council, but each in actual practice having its own determining voice in departmental affairs.

As an organ of administration, however, the city council seemed to be a failure. In many cities, especially in the larger ones, the council was a two-chambered body, large and unwieldy. The committees were made up of members from both chambers, with the result that they were often too large for the work which they had to do,

and the representatives from the two branches of the council frequently failed to work in harmony. The vice of political patronage dominated the work of these committees; their appointments were made on a strictly partisan basis, and responsibility for waste was easily evaded by thrusting it upon the council as a whole. In the course of time, therefore, the control of some city departments was taken from the council and vested in the hands of independent administrative boards. This policy showed itself first in the police department, but it soon extended to such departments as streets, water supply and public health. In some cases these boards were elected by popular vote, in others their members were appointed by the mayor; in a few cases the control of the police department was transferred to commissioners appointed by the state.

This movement for the transfer of administrative authority from the council to special boards or commissioners made notable headway during the period following the Civil War, and especially after 1880. The New York charter of 1873, and the Boston charter of 1885 afford good examples of the changes which the movement brought in its train. In New York the framing of the city budget passed from the hands of the council to the new board of estimate and apportionment. In Boston the charter of 1885 swung the predominance of power in the city's administrative affairs from the council to the mayor, and there it has remained ever since. Other examples might be drawn from the municipal history of Pittsburgh, Chicago, St. Louis and many smaller cities.

It is worthy of note that in other countries, in England

and in the German empire, where a similar rapid growth in the size and administrative problems of cities took place, no movement for the transfer of powers from the council to independent administrative boards made headway during this period. The English borough still administers the affairs of its municipal departments, streets, water-supply, police, fire protection, public health, and so on, through the agency of council committees, just as it did a half century or more ago. The administrative affairs of German cities have been steadily handled for a hundred years by joint committees (*Deputationen*) of the two chambers of the city council. It was only in America that the principle of division of powers was permitted to run riot in municipal organization.

From several points of view this shearing of the American council's authority, while natural enough in the ordinary course of events, was unfortunate in its results. It caused a decline in the prestige of city councils throughout the land. The position of councilman lost its appeal to the better equipped men of the community. The work of governing a modern city is largely administrative in nature. Legislation as such forms but a small item in the annual program of a city government. The efficiency of a city's business depends chiefly upon the way in which appointments are made, the way in which the budget is framed, the way in which the departments are managed day by day, rather than upon the content of the municipal ordinances. Moreover, the field of local legislation has been greatly narrowed by the widening sphere of state law-making, which now reaches down into the minutiæ of urban life. Larger questions of municipal policy are

often settled by state statutes, so that the city council, even though we call it a policy-determining body, deserves that title only in a humble sense. And finally, the use of the initiative and the referendum has transferred final discretion in many important questions of municipal policy directly to the hands of the voters themselves.

Putting all these things together, it is easy to see why membership in city councils throughout the United States gradually lost its appeal to men of ability and public spirit. The councils filled up with ward politicians, with the hirelings of public service corporations, with the minions of those who sought contracts from the city or who had supplies to sell, and with men of paltry caliber who could make no headway in private vocations. Others would not give up their time and energy to fruitless bickerings in a body which no longer possessed the constructive power to improve the conduct of the city's affairs. It is power and the promise of results that attract men of the right type to public office. When the city councils lost these things it was natural that they should everywhere suffer a serious impairment in personnel.

Let it be repeated that this decline in the authority and in the standards of city councils has been unfortunate. Without question there is a place in every sound municipal system for a deliberative body, provided it is properly made up, not too cumbersome, given definite powers and restrained from interference with matters which are not within its own sphere. There are things which ought to be settled by a meeting of minds, not by the decisions of one man. If there is no city council to handle them, they are altogether likely to be taken over by the state legisla-

ture. A council of some sort is therefore needed (1) to ensure to the city a reasonable degree of autonomy in the determination of local policy, and (2) to enable a proper distinction to be made between those things which require deliberation, and those which, being purely administrative in character, demand vigor and decision.

There has been in the public mind during the last fifteen years much confusion upon the question of separating local legislation from administrative work. A great deal of it has arisen from a failure to understand that the two functions can be kept separate without being independent. Friction, and a lack of coöperation between the two branches of city government, has been due, not to the fact of their separate existence, but to the irresponsibility of one to the other. This is a feature which many sponsors of the commission plan have been prone to overlook. From one system in which the legislative and administrative branches of city government were as independent as two watertight compartments, they have turned with eager expectation to another in which the two are completely fused. The commission is a legislative and executive board combined. The commission plan denies the need of the slightest separation of powers.

It is here that one finds the root of the troubles which confront the commission plan in actual operation. Save in small cities a commission of five men is not large enough to be a proper policy-determining body. The satisfactory determination of civic policy involves adequate representation of all the real interests concerned, and a body of five men does not, in larger municipalities, provide adequate representation. Four years ago a commit-

tee of the National Municipal League, in its report upon the merits and shortcomings of the commission plan of city government in actual operation, laid emphasis upon this point. "Five men are too few to represent the varied elements of a great population, and will be too far from the people to be able to analyze public opinion by direct contact. The commission plan should therefore be enlarged but in a manner which will retain the short ballot. For moderate-sized cities, the choice of only a part of the commission at a time would help, but in the larger cities a sub-division of the people by ward divisions or proportional representation seems advisable." It is urged on the other hand, that the use of the iniative, referendum and recall would be sufficient to keep even a few men in touch with the wants of the masses, but that would hardly be the case unless these things were used frequently and on a scale such as would ultimately break them down.

The commission plan, accordingly, provides a body which is too small to be "able to analyze public opinion by direct contact" in larger cities. On the other hand the commission of five is too large to be thoroughly efficient as an administrative body. Much has been said and written about the way in which a commission concentrates responsibility for the conduct of municipal business, unifying the whole governmental system, and providing the supervisory brain which is necessary to a successful organism. In truth there is far more unification of responsibility and far more coördination of energies under the commission plan than under the ramshackle of councils, boards, committees and commissioners which so

many cities possessed two decades ago. But it is at the most a five-headed unification; it still leaves room for friction on a three-to-two basis, for wasted energy and for the management of departments in such way as to promote personal or political ends. That is not a mere possibility; many commission governed cities in the last few years have found it to be a disappointing reality. Almost every argument that can be used in favor of concentrating administrative functions in the hands of five men instead of fifty can be applied to the project of concentrating them in one rather than in five. Localization of responsibility in a city manager is more complete than it can ever be in any body of men however small.

Commission government, accordingly, has in some cases failed to meet expectations, because it tries to straddle two horses going in opposite directions. It provides a body which is, in many cases, too small to be a good local legislature and too large for efficient administration. It asks the voters to choose men who will adequately represent them in the general determination of city policy — men of broad views and general sympathies — but who will at the same time each be competent to take general charge of a special administrative department such as finance, public works or public safety,— who will, in other words, have highly specialized interests and sympathies as well.

So far as the composition and powers of the city council are concerned the plan set forth in the Model City Charter rests upon the conviction that there should be a place in the municipal framework for a body which will be avowedly deliberative, supervisory, and policy-determin-

ing, which will be wieldy enough to perform these functions properly and yet large enough to be truly representative of the community's opinions. It rests upon the further conviction that deliberative and administrative functions cannot with the best results be vested in the hands of the same men. In other words the framers of this Model City Charter have come to the conclusion that functions can be and ought to be separated without being made independent. Many of the troubles which beset our cities before the advent of the commission plan resulted from the fact that authority was placed in independent hands and in too many of them, not from the mere fact that legislative and administrative powers were committed to separate authorities.

The Model City Charter accordingly provides for a council with a membership which can be enlarged or contracted according to the varying size and needs of different cities. This council is to be the pivot of the municipal system. It is to be the final source of local authority, not sharing its powers with some other body or official but delegating some of them. That is to say, to a city manager chosen by the council and holding office during the council's pleasure, it assigns the entire charge of administrative affairs. The two great functions of municipal government are thus placed in separate but not in independent hands. Legislation is intrusted to a body which is large enough to be adequately representative; on the other hand, the concentration of administrative functions is made complete. The councilors are laymen, without expert knowledge or special interests. The city manager is a professional administrator. There can be

no confusion in this arrangement, no deadlocks or lost motion.

Now as to the composition and powers of the council. The number of councilors is advisedly left flexible, with a range from five to twenty-five, according to the size of the city. Councilors are to be chosen at large. The system of election by wards has long since proved itself to be an obstacle in the way of attempts to get councilors of adequate quality. But where a city is very large, where it would constitute, when taken as a whole, an unwieldy electoral area, there is a strong case for dividing it into districts of considerable size. "To express it in another way, an electorate may be so large that it cannot perform even a simple task without organizing for it. . . . In huge electorates it will have to be a more elaborate and costly organization than we can ask the candidates to construct. . . . Let the political unit of district be not so large, but that an adequate impromptu organization can be put together at short notice. . . . Enlarge the district beyond a certain point and the business of winning an election becomes a job for experts only." [1]

Provision is made for the nomination of candidates by petitions bearing a moderate number of signatures and for election on a short ballot bearing no party designations. Into this system a plan of preferential voting or of proportional representation may be readily adjusted if that should be desired.

As for the powers of the city council, these may be stated briefly. It is designed to embody, as it were, the

[1] R. S. Childs, "Short Ballot Principles" (Boston, 1911), pp. 54–56.

sovereignty of the community. It is the legislative organ of the city exercising all the authority which the municipal corporation possesses — with one important exception only. This restriction is that the city council, once it selects a city manager, devolves all direct administrative authority upon him. "Neither the council nor any of its committees or members shall dictate the appointment of any person to office or employment by the city manager, or in any manner interfere with the city manager or prevent him from exercising his own judgment in the appointment of officers or employees in the administrative service"[1] The council appoints the city manager, it maps out his work; it may investigate his results, and it may remove him at any time; but while he is in office it may not interfere with the performance of his designated functions. Administration is given a place apart, but it is not an independent place. It is subject to control but not to factious interference.

On the other hand, a large range of authority is given to the city council. It enacts the ordinances, levies the taxes, votes the budget, exercises the city's borrowing power, provides the public services, and authorizes the local improvements. It becomes once more the parliament of the community, the general policy-determining authority. That is the position which it holds in English cities to-day and which it once held in this country. It is a position of which it should never have been deprived. The principle of municipal home-rule carries with it the requirement that there shall be some representative body to exercise, with due deliberation, the large measure of

[1] Sec. 3.

autonomous powers which a home-rule system confers upon the municipality. The control of these powers should be centralized, not parceled out among several organs of local authority. Here is where the city council finds its appropriate place.

Under this system the mayor ceases to be a separate organ of local government. Chosen by the council from its own membership he becomes its presiding officer, with the usual authority of a chairman but with no administrative powers except in times of public danger or emergency when he may, with the consent of the council, take temporary command of the police. He is, however, to serve as the titular head of the municipality on occasions of ceremony. His position becomes, in fact, almost identical with that of the mayor in an English borough, or, as a better analogy perhaps, with that of the American mayor before the principle of divided powers was pressed to an absurdity in our local government.

A word in summary and conclusion. The orthodox or "federal-analogy" scheme of city government provided legislative and administrative organs, a council and a mayor, quite independent of each other, the preponderance of real power resting usually with the mayor. It represented a more or less conscious attempt to reproduce in miniature the complicated machinery of the national government. The city council, usually comprising until recent years two separate chambers, possessed the right to pass the ordinances, make the appropriations and authorize borrowing on the city's credit. The mayor, on the other hand, obtained and still holds in many cities the power to make nearly all the administrative appoint-

ments, subject often to confirmation by the city council or by the upper branch of it, likewise the direction of expenditures after the appropriations have been made by the council. To assist the mayor in his formidable task of administering the business of the community there are administrative boards and officials, who are usually appointed by him for definite terms and responsible to him alone. The complications of this plan are endless; it makes a scheme of local government which, in larger municipalities, defies intelligent understanding on the part of the ordinary citizen. For nearly two generations attempts were made to simplify it, usually by defining more sharply just what functions were legislative and what were administrative. And as the latter were much the more numerous and the more important, every step in this direction made for an increase in the powers of the mayor.

Then came, with the beginning of the twentieth century, the so-termed commission plan. Hurrying to the other extreme it abolished all distinction between the two great functions of legislation and administration, making a sharp reverse upon the steady trend of the previous five decades. It ignored, not wholly, but largely, the need of an organ of deliberation. It went forward with the postulate that the business of city government is almost altogether executive and that the commission should be an executive body, first and last. Yet it did not carry this line of thought to a logical conclusion. It did not provide complete unification of administrative power and responsibility, nor did it aim to put the management of the city's business directly into trained hands.

The purpose of the present Model City Charter is to avoid the dangers and to obtain the advantages of both the foregoing plans. The city council is regarded as a necessary agency of popular municipal government, necessary as a means of protecting local autonomy against state interference, and necessary as a means of giving the citizens a body which will reflect properly the trend of electoral opinion. And if the city council is a necessary part of a well-organized municipal system, it ought to be a body of real power and dignity. Without these it will not attract the right sort of men into its ranks. It is, therefore, made the controlling organ in all branches of civic policy. On the other hand the present plan recognizes the soundness of the principle that administrative work, to be efficiently carried on, must be committed to expert hands with localized responsibility. That principle it carries to a logical conclusion, namely, the delegating of administrative power to a single, well-paid, expert administrator. To this city-manager, who has broad authority within his own sphere but who is strictly accountable for the results which he secures, the actual details of city business management are entrusted. The city-manager plan is not, therefore, a compromise between the older and the commission schemes of municipal government, but a carrying to their proper conclusion of those features which were commendable in both.

IX

THE INITIATIVE, REFERENDUM AND RECALL

With the growth of the tendency to concentrate legislative and administrative powers in the hands of a steadily diminishing number of officials, one movement for popular control (the initiative, referendum and recall) has grown with almost equal rapidity and strength. In the first Municipal Program, this idea was referred to as "direct legislation," a phrase then as now loosely used in general discussion. "Direct legislation," meaning legislation directly by the voters instead of through the medium of their elected representatives, as so used, included not only the initiative, referendum and recall, although the recall had little to do with legislation, but the methods which prevailed in New England town meetings and formerly in some of the Swiss cantons. The town meeting system was manifestly archaic and of use only in smaller communities.

"Direct legislation," however, may be expanded from small to large communities by the use of the initiative and referendum. These legislative measures may be initiated by means of written petitions, signed by a prescribed percentage of legal voters of a political district, to be referred to the decision of the entire electorate of said political unit at the next general election or at a special

election. Dr. C. F. Taylor, an ardent advocate of the initiative, referendum and recall, is of the opinion, however, that "no one in this or any other country ever advocates the town meeting in large communities. Advocates of the initiative and referendum staunchly defend the representative system of legislation; but recognize that its operations, for reasons of dishonesty or lack of understanding, may not be truly representative of the sentiments, desires and welfare of the represented. Hence, they advocate the introduction of initiative and referendum powers into every municipal charter and every state constitution; so that when, in the opinion of a reasonable number of voters, any act of the legislature is unsatisfactory to the voters, this reasonable number may demand a reference of the act to the entire body of voters, usually at the next regular election; also when, in the opinion of a reasonable number of voters, the legislative body has neglected to pass a measure which this reasonable number of voters believe to be desired by a majority of the voters, this reasonable number may initiate said measure to be placed on the ballot usually at the next general election for the decision of the entire body of voters."

Obviously this is not "direct legislation" except upon those topics in regard to which the representative body has not, or is suspected not to have, been truly representative of its constituents. The initiative and referendum powers are not intended to supplant representative government, but to perfect and safeguard it; and the advocates of the initiative and referendum do not advocate "direct legislation" as a general proposition to the exclusion of rep-

resentative legislation. In fact, "they consider as ridiculous any proposition to impose 'direct legislation' to the exclusion of representation upon large cities and states, where it would be absolutely unworkable. In small communities only is exclusive direct legislation applicable, as illustrated in the New England town meetings, where it is still in use."

Such advocates of the initiative and referendum insist that the term "direct legislation" shall not be used except in connection with government in small communities where government is by means of town meetings. They also recognize the fact that legislation in large communities is not practicable except through representative legislative bodies; but they also recognize that representative bodies sometimes "go wrong." In order to correct and control legislative bodies, therefore, they advocate the initiative and referendum.

The recall is sometimes linked with the initiative and referendum, but the recall is not, as already indicated, a legislative instrument. Its purpose is for the popular control of officers, not legislation. It has most frequently been applied to executive officers, although it has been applied to judicial and legislative officers. Its use is merely to remove from office an individual who has been elected to an office before the regular term of that officer has expired.

In the first Municipal Program there was no provision for recall, and the council was given power to establish a method of "direct legislation," Section 3 of Article 3 of the proposed constitutional amendment reading, "the council of any city may, with the consent of the majority

of the qualified voters of the city voting thereon at the next ensuing city election taking place not less than —— days thereafter,[1] establish a method of direct legislation so that qualified voters of the city may submit and a majority thereof voting thereon may decide by direct vote propositions relative to city matters." The Municipal Corporation Act, Section II of Article V contained a provision to the same effect.

Under the strong home rule influences pervading the first Municipal Program, a city was given power to try this experiment, but the committee did not see its way clear, nor did the situation prevailing at that time justify a recommendation in favor of embodying the initiative, referendum and recall as essential, integral parts of a model city charter.

In the space of time intervening between the drafting of the first (1898–1900) and the second (1914–16) municipal programs, there had occurred several interesting and suggestive developments. In the first place there had been the introduction, growth and generally successful conduct of the commission form of government as embodied in the Des Moines Plan. This included the initiative, referendum and recall. The experience under the charters modeled on the Des Moines plan established a body of precedents of great importance. Other cities like Portland, Oregon, Los Angeles and Seattle, which were not operating under a commission form were using the initiative, referendum and recall, establishing a still further body of interesting and valuable experience. In an article published in the *National Municipal Review*[2]

[1] This, as will be recognized, constitutes a referendum.
[2] Vol. III, No. 4, page 693, 1914.

the results were given of an inquiry as to the existence and use of the initiative, referendum and recall in 279 cities then operating under a commission form of government, some of which, especially those modeled on the Galveston plan, were without provisions for them.

Of the 279 municipalities reported, eighteen seem to be entirely without the initiative, referendum or recall. Of the remaining 261 municipalities, 197 have all three; 36 have the initiative and referendum; four have the referendum and recall; four have the initiative and recall; two have the initiative only; two have the referendum only, and fourteen have the recall only. However, six, not included in the above figures as having the referendum, have a limited referendum for franchises only or bonds only, one having the obligatory referendum on franchises.

On June 30, 1914, the voters of St. Louis, Mo., adopted a new charter providing for the initiative, referendum and recall on a workable basis, the result giving St. Louis the distinction of being the largest city in the country having these instruments. Sentiment for them was increased by the successful use of the initiative under the old charter in forcing the legislature to complete the Mississippi River bridge. At that time over 50 per cent of the voters signed the initiative petition.

The Michigan home rule law of 1913 grants an interesting method of initiating charter amendments. In his "Organized Democracy," finished in May, 1913, Dr. Frederick A. Cleveland, page 355, says: "In California eleven cities which do not have the commission form of government have adopted the initiative and referendum." But the eleven cities in California referred to by Dr.

Cleveland, and the home-rule New York and Michigan cities, above mentioned, were not included in the definite figures given in the *National Municipal Review* article, owing to technical difficulties and their very recent enactment.

So much for the plain facts concerning the existence of these measures in the fundamental laws of the cities of this country. "How about their use?" the investigator asks:—

"Of the 261 municipalities that have these powers, thirty-one have used the initiative, twenty-six have used the referendum and twenty-seven have used the recall. Of the six that have the limited referendum, one has used it on franchises.

"The preceding paragraphs contain some figures that will be a surprise to those who consider the initiative, referendum and recall as radical and dangerous instruments for the voters to possess. For example, of the 197 municipalities that possess all three of these instruments, 137 have not used any of them. This, however, does not argue that these instruments are not of value. The editor of the *National Municipal Review* said in a lecture delivered at Raleigh, N. C., March 10, 1914, that these measures are 'more valuable in their existence than in their use. Their existence impresses a sterner sense of duty and keener thoughts of responsibility in the minds of officials.'"

In commenting on the data which he had gathered, Dr. Taylor made this remark: "The United States of

America is a very large country, peopled by a citizenship which is active in many ways, so that if it were possible to have all of the facts concerning the existence and the use of the initiative, referendum and recall in the cities on a given date, another twenty-four hours would perhaps render the statement incomplete in some particular. So the above statement is as complete as it can well be made at any one writing; and so far as known to the writer, it is the first attempt to make a complete collection of these facts. The figures are corrected to September 1, 1914."

Nevertheless the results afford an excellent cross section of experience and go far toward justifying the judgment expressed in the final paragraphs: "We see in this review a safe, healthy and commendable exercise of direct powers of the voters in the public affairs of municipalities. These powers have not been abused, as is plainly seen by the large number of municipalities which have these powers, but which have never used them; and in the fact that in no place has their use been 'cranky' or excessive. These powers have been used rather freely in Portland, Oregan, and in Dallas, Texas, but we have no evidence that there is any sentiment in these places for the abolition of these powers on account of their somewhat free use. On the contrary, we may reasonably assume that the use of these powers is an evidence of their appreciation — when there is occasion for their use.

"If these powers of public control of public affairs and of officers had come sooner into the municipal life of this nation, would municipal mismanagement and cor-

ruption have become a national disgrace? I think not. I hope for and predict the continued rapid extension of the initiative, referendum and recall until they will be in the charter of every municipality under the stars and stripes. The modern American spirit demands that the public, through the electorate, shall have power to control public affairs and officers, whenever, in the judgment of the electorate, there is occasion to do so."

[1] For further information on this subject in the pages of the *National Municipal Review,* see "The Initiative, Referendum and Recall in San Francisco," by E. A. Walcott, Vol. II, page 467; "The Oregon System at Work," by Richard W. Montague, Vol. III, page 256.

Three motives unquestionably have played a part in the development of public sentiment for popular control.

First and foremost is the growth of the desire on the

[1] A more recent and more complete presentation of the actual experiences of American municipalities with the Initiative, Referendum and Recall based on original reports from officials in the cities concerned, was published in the October, 1916, issue of *Equity.* For that presentation reports had been received from 396 municipalities having one or more of these instruments of direct control. These reports contained replies to a questionnaire showing the following facts: In 258 of the municipalities heard from there had not been so far, a single instance of the use of these powers of popular control. The use of them which had occurred in the remaining 138 municipalities was thus analyzed: the Initiative was used 128 times; the Referendum 103 times (not counting compulsory referenda on franchise grants or bond issues or voluntary submissions of questions by city commissions); and the Recall 59 times.

In only seven of the reports was there express opposition to these powers. The reports from city officials, 116, definitely stated that the existence of the powers was beneficial even though they had never yet been resorted to by the voters.

part of an increasing number of people in the various communities of the United States to have a larger and more direct share in the actual government. Because of the various political ills which the American communities and particularly the cities had suffered, the voter had come to feel that he must directly bear a larger part of the burden. Hence the movements for direct primaries, direct election of United States senators, and "direct legislation."

Second: A part of this movement, although really constituting a separate motive, was the breaking down of confidence in representative government. Special interests and great political organizations had fed upon and grown powerful on the complicated machinery which had grown up, including a highly complicated system of so-called representative government. The quickest remedy for this condition seemed to be to transform the old-fashioned system of checks and balances of one department of government against another into a system of checks or control on the part of the people. In other words, to give the representatives a power of attorney revocable at the will of those whom they represent — the people — and reserving to the people the right to initiate new lines of business when they feel that the situation demands it. In the words of a well known authority:

"The old-fashioned 'checks and balances,' the divisions of powers and distribution of responsibilities do not check. They permit the intrusion of selfish interests in the government and prevent the adequate protection of the public interests. We see the need of discontinuing

the 'balances,' and of concentrating the powers and responsibilities. This is the only way to increase efficiency. But concentrated powers are dangerous without the possibility of control outside the few hands into which great power has been concentrated. Where is the most rational place in which to lodge this possible control? There can be but one answer: the electorate. And the initiative, referendum and recall are the best methods yet devised in which to exercise this control." [1]

Thus the initiative, referendum and recall grew out of the failures of the old form of city government with its checks and balances and strict separation of powers. The advent of the newer type of municipal organization with its concentration of power, led to a still stronger insistence upon measures for direct popular control. Commission government appeared frankly to abandon the separation of legislative and executive powers and swept away the traditional system of checks and balances. It is true that these devices had proved to be unreliable safeguards of popular rights. Still they had been something, and when it was proposed to omit them from city charters altogether, there was a strong demand that some effective means of popular control be put in their place. Without the assurance afforded by the initiative and referendum, commission government and the manager plan would have made very slow progress.

The third motive entering into the development was the fear lest the rapid concentration of power might lead to the creation of a strong oligarchy. Given the great

[1] *National Municipal Review,* Vol. IV, page 59.

powers of the city manager form of government under ample home rule powers, and the people might find themselves in a much worse condition than formerly. How get the best results out of concentration of legislative and administrative powers and a minimum of disadvantages — and the answer has been the initiative and referendum and recall!

When the second committee on municipal program came to consider the questions involved in the light of experience, it adopted by a majority vote the provisions that are to be found embodied in Sections 11 to 34 inclusive. This action may be regarded as fairly typical of the opinion of the students of the problem of government, among whom there is a considerable number who still regard the case of the initiative, referendum and recall as "not proven."

There are others who feel that they represent a temporary expedient to check current abuses which will pass away in time as a result of the application of the initiative, referendum and recall.

President Woodrow Wilson in an address at Kansas City, May 5, 1911, said:

"The methods of our legislatures make the operations of political machines easy, for very little of our legislation is formed and effected by open debate upon the floor. Almost all of it is framed in lawyers' offices, discussed in committee rooms, and passed without debate. Bills that the machine and its backers do not desire are smothered in committee; measures which they do desire are brought out and hurried through their passage. It

happens again and again that great groups of such bills are rushed through in the hurried hours that mark the close of the legislative sessions, when every one's vigilance is weakened by fatigue and when it is possible to do secret things.

"When we stand in the presence of these things and see how complete and sinister their operation has been, we cry out with no little truth that we no longer have representative government.

"If we felt that we had genuine representative government in our state legislatures, no one would propose the initiative and referendum in America. They are being proposed now as a means of bringing our representatives back to the consciousness that what they are bound in duty and in mere policy to do is to represent the sovereign people whom they profess to serve, and not the private interests which creep into their councils by way of machine orders and committee conferences.

"It must be remembered by every candid man who discusses these matters that we are contrasting the operation of the initiative and referendum, not with the representative government which we have in theory, but with the actual state of affairs."

There are still others who maintain that these three instruments are of the essence of democracy. Judson King, the executive secretary of the National Popular Government League, is one of these and he has set forth at length his views in an article which has been published as a Senate Document.[1] Whatever the final judgment,

[1] Senate Document 736, 64th Congress, 2d session.

the preponderance of sentiment at this time is certainly to the effect that the initiative, referendum and recall are mighty handy instruments of control to have nearby for use in case of necessity.[1]

That they have been so used in the main is clear from the facts which have been correlated in the *National Municipal Review* article to which I have referred, and one may say that, in examining the uses of the initiative, referendum and recall in the various cities of the country, we do not find any indication of the fact that the percentages have had much influence one way or the other.[2] In fact, many whose requirements are the lowest have not used these powers at all. Among those which have used these powers the most frequently can be found the ones which require the highest percentages. For example, Dallas, Texas, has made the most frequent and the most successful use of the recall among all the cities that have the recall, yet its recall requirement is " 35 per cent of the entire vote cast for candidates for the office of mayor on the final ballot at the last preceding general municipal election," yet not quite as high as that recommended by Professor James, as he recommends 35 per cent of the entire electorate. It would seem that when there is occasion to invoke these powers, they will be invoked even

[1] It must always be borne in mind that the referendum in one of its forms is an instrument that has been in use since the beginning of our national life, for we have from that time to the present referred to the voters for approval or disapproval, new constitutions and constitutional amendments, new charters and charter amendments (although until very recently with by no means the same frequency as the former), and grants of franchises.

[2] This refers to the percentage of voters necessary to put the initiative, referendum or recall into operation. It varies greatly in different charters.

though the conditions are difficult; and easy conditions do not cause the undue use of these powers.[1]

[1] Those who desire an extended, adequate detailed discussion of the Initiative, Referendum and Recall are recommended to consult the volume of Dr. Delos F. Wilcox (a member of the Municipal Program Committee), "Government by All the People" (Macmillan Co., 1912), which is an adequate discussion of these "instruments of democracy." He does attempt to discuss the specific forms that have been adopted in various cities and states, but rests his arguments almost entirely upon a consideration of the failures of our old system of checks, balances and upon a priori reasons for believing that the new instruments will be more effective in establishing popular self-government.

Another important volume dealing with the initiative, referendum and recall is the one edited by Prof. William Bennett Munro of Harvard University, in the *National Municipal League Series*. This volume presents both sides of the question and contains a number of interesting chapters dealing with the actual operation of these three experiments in American political life.—EDITOR.

X

THE FRANCHISE POLICY OF THE NEW MUNICIPAL PROGRAM

THE National Municipal League, from the beginning, has been militantly in favor of municipal home rule. It has believed that one of the greatest obstacles to efficient, democratic government in American cities has been and is the characteristic American policy of subjecting cities, both as to their governmental forms and as to their functions, to detailed legislative limitation and regulation. It has seen that, in America at least, the die is cast for the forms of democracy. It has urged that the only possible way for a municipal democracy to keep its vitality and learn the wisdom of self-government is by being permitted to look out for its own salvation. But the League has not been content to advocate home rule merely as a vague aspiration, something that everybody favors and nobody understands; it has sought to define as well as to advocate the principle of municipal self-government.

PUBLIC UTILITIES IN ORIGINAL MUNICIPAL PROGRAM

On the general policy of municipal ownership and operation of public utilities, or of any specific class of them, the League has never taken a dogmatic stand, either for or against; but it has recognized that the right of a city to determine this issue for itself is an essential and

very important element of municipal home rule. In conformity with these principles the original Municipal Program included, both in the proposed Constitutional Amendments and in the Municipal Corporations Act, provisions conferring upon cities broad powers with reference to public utilities. The Constitutional Amendments (Article Third, Section 7) provided that every city should be "vested with power to perform and render all public services, and with all powers of government," subject to legislative limitations, which could be imposed only in the manner prescribed. Moreover, these amendments (Article Third, Section 1) provided that no public utility franchise should be granted for a longer period than 21 years; that any such franchise might provide for the reversion of the property of a public utility to the city at the expiration of the grant, or for the purchase of such property by the city; that every franchise should "specify the mode of determining any valuation therein provided for," and should "make adequate provision by way of forfeiture of the grant or otherwise, to secure efficiency of public service at reasonable rates, and the maintenance of the property in good order throughout the term of the grant"; and that every grantee of a franchise should keep books and render quarterly reports to the financial department of the city showing in detail its receipts, expenditures, assets and debts, its books being open to examination by the city. The amendments also provided (Article Third, Section 2) for a general limitation upon municipal indebtedness, from which, however, were to be excluded bonds authorized by a two-thirds vote of the city council, and approved by the mayor and a majority

of the qualified voters of the city, issued " for the supply of water or for other specific undertaking from which the city will derive a revenue "; provided that this exemption from the debt limit, unless the principal and interest of the bonds were payable exclusively from the receipts of the utility, should not apply to public utility bonds after the expiration of a period of not more than five years from the date of issue, if such utility failed to be self-sustaining: that is to say, if it failed to provide enough revenue to pay all costs of operation and administration, including interest and insurance against loss by fire, accident and personal injuries, together with an annual amount sufficient to pay at or before maturity all bonds issued on account of such utility.

STATUTORY GRANTS AND RESTRICTIONS

The proposed Constitutional Amendments granted to every city very large powers of home rule, as we have seen, but the exercise of these powers was subject to the constitutional limitations described and also to limitation by general legislative acts or by special legislative acts adopted in a specific manner prescribed in the amendments. The model Municipal Corporations Act represented the National Municipal League's idea of the manner in which the legislature of the state, under the constitutional provisions already described, ought to provide for, limit and regulate the powers of cities. This act provided (Article Second, Section 1) that a city might, for any purpose which it deemed necessary or expedient for the public interest, " perform and carry on any public service, and acquire property within or without the city

limits by purchase, gift, devise or by condemnation proceedings, and hold, manage and control the same." The act also provided (Article Second, Section 3) that the city should have power to "construct and maintain waterworks and sewers," and (Article Second, Section 4) to "operate ferries, and charge tolls and ferriage." It also provided (Article Second, Section 10) that "the city may, if it deems proper, acquire or construct, and may also operate on its own account, and may regulate or prohibit the construction or operation of railroads and other means of transit or transportation and methods for the production or transmission of heat, light, electricity or other power in any of their forms, by pipes, wires or other means." In regard to public utility franchises (Article Second, Section 10) the act repeated the constitutional provisions limiting grants to twenty-one years and further provided that "in addition to any other form of compensation, the grantee shall pay annually a sum of money, based in amount upon its gross receipts, to the city." The constitutional provisions above described providing for the publicity of public utility accounts and for exemption of municipal utility bonds from the general debt limit were repeated in the act.

The original Municipal Program was adopted in 1900. At that time its provisions in regard to franchises and public utilities, if we consider the state of the law and the practice in most American commonwealths and cities, were comprehensive and radical. Nevertheless, the popular resentment against perpetual and long-term franchises and against the exploitation of the streets by public service corporations was becoming acute and the senti-

ment in favor of municipal ownership and operation of all public utilities was then coming into the ascendant. But the changes that have taken place in the public utility situation during the past eighteen years have been so rapid and so fundamental as to make the comparatively radical program of 1900 out-of-date and inadequate for the needs of 1918. These changes include an enormous expansion of public utility investments, a vast increase in municipal indebtedness for general purposes, the overflow of public utilities from strictly urban into suburban and interurban fields, and the development of the idea of the indeterminate franchise and the idea of state regulation by public service commissions. The National Municipal League is not yet committed to the policy of municipal ownership and operation of all public utilities, and is not prepared to substitute for the idea of municipal home rule in public utility matters a comprehensive and exact public utility policy to be recommended to all cities alike. Nevertheless, the League recognizes that the mere untying of the hands of a municipality so as to give it discretion to solve its utility problems in its own way, does not meet the complete requirements of a national municipal program. While many important franchise and utility questions are still mooted, even among those who look at these problems solely from the public point of view, the time is now ripe for a general declaration of principles, in accordance with which local utility policies should be worked out.

NEW PROGRAM MAKES UNIFORM GRANT INSTEAD OF IMPOSING UNIFORM RESTRICTIONS

The new Municipal Program has been constructed upon somewhat different lines from the old. The provisions now recommended for incorporation in the fundamental law of the several states, have been drafted as a "charter of liberties," and all are brought under the general caption, "Constitutional Municipal Home Rule." The idea of uniformity in the organization of cities has been eclipsed by the idea of local freedom as to the forms of government to be adopted in any particular case, and the idea of *uniform restriction* of municipal powers has given way almost wholly to the idea of a *uniform grant* of comprehensive powers of local self-government to be exercised in the discretion of each municipality. In the statutory portions of the program, the idea of a general municipal corporations act has been replaced by that of a model city charter, to be adopted by the citizens of the city in the exercise of their free choice under constitutional guaranties.

The constitutional provisions recommended by the new program are therefore more comprehensive and less restrictive than those recommended by the old program. In so far as public utilities are concerned, the Constitutional Amendment (Section 5) provides that the general grant of powers conferred upon cities shall be deemed to include the power "to furnish all local public services; to purchase, hire, construct, own, maintain and operate or lease, public utilities; to acquire, by condemnation or otherwise, within or without the corporate limits of the

city, property necessary for any such purposes, subject to the restrictions imposed by general law for the protection of other communities, and to grant local public utility franchises and regulate the exercise thereof"; and "to issue and sell bonds on the security . . . of any public utility owned by the city, or of the revenues thereof, or of both, including . . . if deemed desirable by the city, a franchise stating the terms upon which, in case of foreclosure, the purchaser may operate such utility."

In the formulation of the franchise and public utility provisions of the Model Charter, the new program follows a middle course. In adopting it the League recognized the need for the establishment of certain general principles with which the franchise and public utility policy of every city should square so far as local and temporary conditions will permit. On the other hand, it was deemed inadvisable to attempt to work out in the charter itself the details of a comprehensive constructive public utility policy applicable to all utilities alike and to all cities alike. The actual provisions embodied in the Model Charter establish the following principles:

SPECIFIC PROVISIONS OF NEW PROGRAM

(1) No franchise may be granted, extended or amended except by ordinance, and no franchise ordinance may be adopted until after a printed report containing the recommendations of the city manager, or of the bureau of franchises, if there be one, has been presented, public hearings held and the ordinance itself published in its final form for at least two weeks.

(2) Every public utility franchise shall be terminable

at specified intervals of not more than five years after the beginning of operation whenever the city shall determine to acquire the property, and the method of arriving at the price paid in case of municipal purchase shall be fixed in the franchise. No maximum term limit for franchises is recommended, but it is declared in a note that if in any case a term limit is adopted, provision should be made for the amortization of the investment during the life of the franchise or for the purchase of the physical property by the city at the end of the franchise term.

(3) Under every franchise grant the right is reserved to the city to exercise regulatory powers in the matter of extensions, maintenance of the property, standards of service, quality of products, prevention of unjust discrimination, forms of accounts and reports and other regulations conducive to the safety, welfare and accommodation of the public.

(4) The consent of property owners to the construction of public utilities in the streets in front of their premises is not to be required, unless, as in New York, provision is made by which their arbitrary refusal to consent may be overcome by an appeal to the courts, but property owners are to have the right to recover from the owner of the utility the actual damages incurred by them, less the benefits received, through the construction of the utility.

(5) Revocable permits for minor or temporary privileges may be granted from time to time by the city council without restriction as to its procedure, but such permits shall be limited to classes of privileges specified in a general ordinance which may be adopted only in the

same manner and subject to the same restrictions as a franchise ordinance.

(6) Grants for extensions of plant must terminate with the original grant and be terminable as provided in paragraph (2) above.

(7) Every franchise hereafter granted shall be subject to all the specific terms and restrictions provided for in the charter, even though such terms and restrictions are not expressly set forth in the franchise grant itself.

(8) Copies of all existing franchises claimed by a public utility shall be filed with the city, and the city shall compile and maintain a public record of all franchises and of all utility fixtures in the streets.

(9) Every city shall establish by ordinance a bureau of franchises and public utilities, the head of which shall be an expert in franchise and public utility matters. It shall be the duty of this official to investigate and report on all proposed ordinances relating to public utilities, to exercise diligent oversight over the operation of privately owned public utilities, and to represent the city in all proceedings before a state utilities commission involving public utilites within the city.

(10) The accounts of every municipally owned utility shall be kept distinct from other city accounts and in such a manner as to show the true and complete financial results of city ownership, including the value of service furnished to such utility by other city departments or rendered by it to them. The accounts must also show a proper allowance for depreciation, insurance, interest on investment, and the taxes that would be chargeable against the property if it were privately owned.

It will be noted that these provisions are for the most part restrictive. They embody the rules which, in the judgment of the League, every city should impose upon itself in its charter in order that the granting of franchises, the formulation of public utility policies and the actual operation of public utilities may be done with due deliberation and full opportunity for the exercise of wisdom. The right of self-destruction is not a part of the concept of individual liberty recognized by American law and public opinion. The right of a city, by the act of officials holding a temporary mandate from their constituents or even by the act of the electors themselves who, at any given time, have the last word in the determination of municipal policies, to alienate the use of its streets for an indefinite period or forever, under terms and conditions which the inexperience, the carelessness or the temporary interest of the moment may dictate, is not regarded as an essential feature of the right of municipal home rule in any proper sense of that term. It is recommended, therefore, that the city, through its charter, impose upon its officials and its electorates certain restrictions tending to prevent hasty and ill-considered action, and to preserve the rights of future generations, which otherwise, in an unfortunate moment, might be bartered away. A model municipal charter cannot do less. The one proposed by the League does not do more.

FUNDAMENTAL AIMS OF UTILITY POLICY

However, for the guidance of individual cities in the establishment of a comprehensive and constructive franchise and public utility program, a declaration of prin-

ciples has been formulated by the League and incorporated in the Model Charter in the form of a note. This declaration deserves some discussion and elucidation in this chapter.

The aims of a public utility and franchise policy, as set forth in Note 20, are (1) good service, (2) municipal control of the streets, (3) removal of obstacles to municipal ownership, and (4) low rates. It is declared by way of contrast that it should *not* be the aim of such a policy to secure compensation for franchises or to supply revenues for general city purposes from an indirect tax on the patrons of public utilities.

GOOD SERVICE COMES FIRST

The order in which the constructive purposes of a correct franchise policy are stated is of very great significance. It is the opinion of the League that in many cities where the cry for low street car fares or low rates for other utilities has become a shibboleth of political reform, this particular aim of a correct franchise policy has been overemphasized. The League does not underestimate the *absolute* importance of low rates, but it believes that the *relative* importance of the other purposes enumerated as (1), (2), and (3) has been greatly neglected, to the infinite disadvantage, both present and future, of the cities and the people served by the utilities. It believes that first and foremost of the essential purposes of a correct franchise and public utility policy is good service. Clearly, *service* is the very thing for which a franchise is granted or a public utility constructed. This truth is so obvious and so inherent in the very nature

of a public utility that the class of corporations operating public utility plants is known by the general title *public service corporations.* It is a curious fact, however, that the difference between good service and bad service has often been lost sight of. Perhaps there is no one factor in the recent development of public utility problems more potent for good, as well as for trouble, than the awakened demand on the part of the public for improved service in all classes of utilities. The space allotted to a single chapter is far too short to analyze and describe in detail the elements that go to make up *good service.* But it may be worth while to mention a few of them. In all utilities, adequate extensions of plant to meet the reasonable demands of a growing community are to be regarded as one of the most important elements in good service. For example, in a local transit system, it is not good service to refuse to extend a car line because the people who live beyond the end of it, after walking to the point where they can catch the car, will still be so far away from the center of the city that they will all have to ride and pay their nickels just the same as if they had been able to get on in front of their own doors. It is not good service to compel people to stand in crowded roadways without shelter from heat, cold and storm and exposed to physical danger from street traffic, while they wait five, ten or fifteen minutes to be transferred from one car line to another. It is not good service to keep the cars so cold or so poorly ventilated, or to let them get so dirty, as to endanger the health of passengers. It is not good service to have the tracks so rough, the cars so nimble and the lights so poor that patrons having a long

way to go are unable to read without becoming cross-eyed or blind. It is not good service to furnish so few cars that during rush hours shop girls have to tread on each other's feet in the aisles and the workingmen have to climb on the roof or hang on the outside of the cars "by their eyebrows," as they say in Detroit. Yet all of these undesirable features of street railway transit may be realized in the highest degree in conjunction with eight-for-a-quarter tickets or straight three-cent fares. The opposites of these characteristics are desirable and, the League thinks, necessary, but they cost money and the farther service goes in the direction of these opposites, the more money it will cost. When we come to consider other utilities, good service obviously demands that light shall be light and that heat shall be hot, that communication by electricity shall be quick and that water shall run into the sewers, not sewage run into the water pipes. The League recognizes that reasonably good service under favorable conditions is not inconsistent with reasonably low rates. The League would not boost the rates for the sake of curing poor service when such service results from the operation of a public utility as a kind of ruse to conceal the exploitation of the gullible public through the manipulation of corporate securities. Where poor service has resulted from niggardly operation and maintenance, made and kept niggardly for the sole purpose of enabling real or fictitious investors to extract fabulous profits from the business and transform water into gold, an increase in the rates is certainly not the proper remedy. Nevertheless, the League insists that service is the first requisite in the operation of a public

utility and that reasonably good service is essential even though it may be inconsistent with the lowest rates.

MUNICIPAL CONTROL OF THE STREETS

The purpose that is regarded as second only to good service in its importance is the continuous effective control of the streets by the people of the city. The street is the life of an urban community. It is the common property in which every citizen has a share. That this property, or special privileges in the use of it, should be conveyed in perpetuity, either by sale or by gift, to any individual or group of individuals, is directly contrary to the interests of democracy. It is an intolerable limitation of the common wealth. Therefore, perpetual franchises are not to be thought of. Franchises must be limited, but even a limitation to a period of 20 or 30 or 50 years, which would be sufficient to cover a cycle in the development of one of the great public utlities, is an inadequate limitation for the protection of the public interests. Utilities must go on, and the actual and necessary investments in utility plants must be protected without the cities being tied up by irrevocable contracts for a generation or more. Hence, the old theory of a limited-term franchise is no longer deemed sufficient, but franchises must be revocable at reasonably frequent periods, on condition that the city, when it revokes a franchise, shall purchase at its fair value the property to which the franchise gives life. Not only should the city retain the power to resume full control of its streets by the termination of franchises and the purchase of utility plants, but it is essential that such control should be continuous and vigorously effec-

tive, even during the period when franchises are held and public utilities operated by private corporations. The uses of the street are so multiplex and the development of such uses year by year is so hard to foresee, that a city cannot preserve its freedom of self-development without retaining at all times full control of the distribution of street spaces to the various necessary uses of the street. In fact, the control of the streets acquired by corporations enjoying perpetual and irrevocable franchises for the maintenance and operation of public utility fixtures, is a subtle and powerful force operating almost irresistibly to curtail liberty and strangle democracy. It is fatal to the sense of civic pride and independence without which municipal self-government is a hollow sham, and in its important practical aspects it is a stumbling block in the way of the efficient development of the city street and the complete coördination of its essential uses. But the continuous control of the public streets implies the protection of public utility investments. If the street is to be public in a continuous and real sense, then those who invest in street car tracks, gas pipes, electric conduits and pole lines, and water mains, must be regarded as creditors of the municipality, not as mere speculators in a private enterprise. It is the bane of so-called radical movements, so far as they relate to the control of public utilities, that they often refuse to recognize facts. They insist that the patrons of public utilities should be able to eat their cake and have it too. If cities are to have good service, continuous and certain control of their streets, and reasonably low rates, they must assume the essential and necessary risk in public utility investments.

REMOVAL OF OBSTACLES TO MUNICIPAL OWNERSHIP

The third purpose of a correct franchise policy is to remove the obstacles from the path of municipal ownership and make it as easy as possible for municipal ownership to succeed. In declaring and espousing this purpose, and putting it ahead of low rates in importance, the League at last expresses a theoretical and ultimate bias in favor of municipal ownership. Those who oppose this policy to the last ditch favor making it as difficult as possible for cities to undertake municipal ownership and, in some cases at least, favor making its success when undertaken as unlikely as possible. The League, in urging municipal home rule in relation to public utilities, recognizes municipal ownership as a possible and proper policy under conditions that win for it the approval of the people of a city. But the League has no use for a sham home rule that makes its promise to the ear and breaks it to the hope. When it says that it favors home rule as to municipal ownership, it does not mean the kind of home rule that would permit every cow to jump over the moon — if she can — nor even the kind that would authorize any newsboy to buy the Woolworth building — if he has the money. It means something more than technical or verbal home rule. As applied to municipal ownership, it means the removal of legal prohibitions, the inauguration of a policy of financial preparation and conservation, the development of administrative experience and the organization of special knowledge. Of the many works of old Mother Futility in connection with the reform of American city government, there is none more

pathetic in its indifference to facts than the filling up of a brand-new charter with franchise restrictions applying only to the future and with big-sounding grants of power of the you-can-do-it-if-you-want-to type. Where all existing franchises are terminable or have a definite and reasonably short time limit on their lives, the problem of establishing real home rule in regard to public utilities is hard enough, but when franchises are perpetual, it is infinitely harder.

In the former case, it is a matter of getting ready. It is a common delusion that by the mere passage of time and the development of public sentiment a city may, after a while, *be* ready for municipal ownership. Far from it. Readiness means a definite purpose backed up by years of preparation. Plans must be made for fixing the purchase price and for getting the money to pay it. All franchise rights as to any one utility must be brought to expire on the same date. The whole scheme of local taxation must be adjusted to conditions that will be necessary when the utility is taken over. A thorough knowledge of the utility plant, of its operation and of the complaints and needs of the public must be got through expert study and continuous attention and control. The administrative machinery must be developed to make municipal operation a success.

When all outstanding franchises, or some of them if they are important ones, are perpetual, then the problem resolves itself into the question of how to find means to get rid of perpetuity. The city is justified in assuming an attitude of implacable hostility to a perpetual franchise, and it should use every lawful means in its power

to make the holders of such a franchise so uncomfortable and their exploitation of it so unprofitable that they will be willing to surrender it for the sake of coöperation and security. Comparatively few utilities are so well intrenched that they do not need further concessions from the city from time to time. This need may be used as a leverage to pry them loose from their perpetual rights. The power of state and local taxation and the power to regulate rates and service may also be used to make perpetual franchises untenable. A city cannot effect its purpose, however, merely by oppression. It must have a constructive franchise policy, with adequate provision for the protection of legitimate investments, in order that it may be able to offer the holders of perpetual rights some inducements to give them up and come under the city's new policy.

Another necessary means of preparing for municipal ownership and of making success in municipal operation practicable, is the establishment of thorough and honest accounting methods. Every city that owns and operates a public utility should discard by charter requirement the slipshod political methods of keeping its accounts and telling its financial story which prevail so generally at the present time.

LOW RATES

Finally, it should be the purpose of a correct franchise and public utility policy to insure rates as low as can be given consistently with the rendering of good service, the retention and development of public control of the streets and the financial preparation required to make the transition to municipal ownership under promising con-

ditions possible. All forms of special taxes on public utilities should be sacrificed to low rates. Franchises as such, apart from the physical property to which they give life, should have no value. They should not be sold or leased for a money consideration. Utility services are so vital to the healthy development of urban communities, so public in their nature, so universal in their application that sound municipal policy forbids the adoption of any plan by which the consumers of utility services shall be taxed indirectly for the support of other governmental activities. Another reason for keeping rates as low as possible is the necessity of curbing the natural tendency to inflation of franchise values where utilities are operated as monopolies. In order to keep in control of the streets, the city has to keep its hand on the throat of the franchise holder all the time. This is a hard saying, but a true one, and one of the most effective ways of keeping a monopoly from developing arrogance is by keeping its rates pared to the quick. However, if low rates are permitted to excuse bad service, they are themselves inexcusable. It is clear that the reduction of rates, if made use of as the sole weapon of offense against the rapacity of public service corporations, will cut the hand that smites with it. It can be used with safety only as one tool of a complete kit, all of which are kept well edged and fit for constant service.

UTILITIES NOT TO BE EXPLOITED FOR RELIEF OF TAXPAYERS

The old Municipal Program required that every franchise should provide for the payment to the city of a percentage of the grantee's gross receipts. That was before

the day of continuous regulation. It was thought that companies enjoying franchises for profit under fixed terms and conditions ought to share their earnings with the public. The new program contains no such provision, and moreover in its declaration of principles it states that it should be no part of a model public utility policy to secure compensation for franchises or special revenues for general city purposes by an indirect tax upon public utility consumers. This does not preclude the taxing of the physical property of public utilities at the same rate as other property; nor does it preclude a special tax on franchises or a sharing in the profits, if the city's receipts from these sources are put into a special fund for the purchase or extension of the utility itself. When the original program was formulated, the Glasgow idea was rampant in the minds of American municipal reformers. Indeed, for a time the municipal ownership movement, depending on British precedents, exploited the thrifty tax-payer's idea that with enough profit-earning utilities in operation a city might become a tax-payers' earthly paradise, if the tax-payer species did not disappear entirely, translated to another sphere by the uplift of its own happiness. The fable that Glasgow stopped paying taxes when it went into municipal ownership on an extensive scale has been relegated to its place in our municipal folk-lore. It was too good to be true, and if true would have been too undemocratic to be good. We have learned in the last fifteen years that every dollar a public utility can earn at reasonable rates is needed in rendering first-class service, keeping the plant up to the highest practicable standard of efficiency and render-

ing a reasonable return on the necessary investment. There may be temporary and local exceptions, but even to get a surplus for amortization it is generally necessary to lower the rate of return upon the investment by increasing its security. The actual earning power of fixed rates, such as the five-cent street car fare, has been greatly diminished since the campaign for lower rates started, a score or more of years ago. The increase in the prices of general commodities and the increase in the cost of labor and materials have reduced rates without our knowing it, and have in many cases more than offset the gains from the cheapening processes of invention, administrative progress and consolidation. Service is fed by the rates. Special taxation steals away a portion of this food.

FUNDAMENTAL RULES

In seeking to compass the larger purposes of a constructive and liberal public utility policy, every city must, in the League's opinion, conform as nearly as practicable to certain fundamental rules. Every utility serving an urban community should be recognized as a monopoly and treated accordingly, not as an obnoxious private monopoly to be harassed, and destroyed if possible, but as a public monopoly operated in the interest of the city under effective constructive control on the plan that is most economical for the rendering of a community service at the lowest practicable cost. The attempt of a city to sandbag public utilities operating in its own streets, by the granting of competing franchises, is an act of impotent hatred or greed. It is a confession of civic weakness or ignorance, or both. Where full home rule is enjoyed, so

that a city is not hampered in dealing with public utilities by its lack of power, the resort to competition, either through the granting of a rival franchise to another company or by the building of a rival plant for municipal operation, is a proof of incompetence, the result of lack of experience in performing public functions and lack of appreciation of the significance of public utility service. The recognition of the monopoly principle during the continuance of private ownership involves the granting of a single comprehensive franchise for each separate utility covering the entire city, or at least the entire normal unit of operation within the city limits, with a provision for the extension of service from time to time under the terms of the general grant.

As for the duration of franchises, the purposes of the program cannot be well carried out unless every grant is revocable at reasonable intervals of time whenever the city gets ready for municipal ownership. At least in those cases where the city has already made up its mind ultimately to undertake municipal ownership, the franchise should have a maximum time limit within which it is indeterminate, and should bind the city to buy the plant at the expiration of this maximum limit, or even better, provide for the partial or complete amortization of the investment during this period so as to make purchase easy or unnecessary at a definite future date.

COÖPERATION BETWEEN STATE AND LOCAL AUTHORITIES

The vitality of local self-government could not be more seriously threatened than by the complete centralization

of the control of public utilities in the hands of state commissions. The League holds to this opinion in spite of its full recognition that most American cities have shown gross incompetence in dealing with public utilities and that many utilities, particularly in well-citied states such as New Jersey and Massachusetts, have overflowed the boundaries of a single municipality and in many cases have welded into a single unit of service several different municipalities. On the other hand, this declaration of opinon should not be interpreted as a sweeping condemnation of public utility laws establishing state commissions; for many of these laws make express concessions to municipal home rule, while others, including the most drastic, such as the Wisconsin law, the Washington law, and the New Jersey law, do not entirely remove the control of utilities from the municipalities. Rather, they establish a duplicate but superior jurisdiction in the state commissions. Considerable opportunity for local governmental initiative in utility matters is left even in those states where the powers of the state commissions are most sweeping. The League believes that the tendency toward state centralization has gone too far in certain cases, but mainly that public utility legislation is generally blind to the inherent necessity of active coöperation in utility matters between state and local authorities. The atrophy of such local organs of control as have been developed in the past would be a great calamity. What is needed is a broad but careful delimitation of state and local functions, coupled with the establishment of the machinery of coöperation. With these things in mind the League declares that the city should reserve to itself

continuous control over the character and location of utility fixtures, and over service and rates, subject to a reasonable power of review in the state commission where one exists.

CITIES SHOULD DEVELOP THEIR OWN EXPERTS

The League recognizes that ignorance does not become inspired merely by the responsibilities of office-holding. Public utilities cannot be controlled by aldermanic eloquence or executive swaggering. There is no effective power over public utilities that is not based upon knowledge. In this field particularly the man who has the money invested and who is rendering a necessary public service, universally demanded, has an infinite advantage over the men who have merely been elected to something. He may be irritated by the mosquito bites of the pestiferous politicians, but they cannot control him. It is fundamental, therefore, that a city, if it would exercise control that is effective in any sense, must pay attention and set some one to learn the business from the public point of view and keep at learning it. In other words, the city must develop its own experts if it wishes to have any real control in public utility matters. This applies to franchise granting, to the enactment and enforcement of regulatory ordinances, to the handling of the complaints of consumers and to the representation of the city before the state commission or the courts.

LEGITIMATE INVESTMENTS MUST BE PROTECTED

Finally, cities must recognize that legitimate public utility investments constitute a trust fund. These in-

vestments are in aid of public credit. Under the old disastrous theory of public utility investments, they were private and speculative. Cities were Mexicanized by the granting of concessions. This theory lives now only in its results. American cities are now in a transition stage where new wine is being poured into old bottles that cannot hold it. The conservation of the honest and necessary investment in public utilities is not a mere cry of exploiters of the streets. The demand for it is not an earmark of conservatism and corporation sympathies. It is rather the first plank in an effective radical platform. The city can never be successful either in the control or in the operation of public utilities, except on the basis of common honesty and an intelligent recognition of facts. If the city wants good service, continuous public control, ultimate successful municipalization and low rates, it can secure these things only by throwing every safeguard around the investment necessarily devoted to the public service, thus reducing its risks to a minimum and putting it upon a basis approximating the security and the low rate of interest of municipal bonds.

Such is the League's philosophy of public utilities and the principles of franchise-granting. Necessarily, a draft of sections for a model charter cannot embody and elaborate this philosophy in full detail. Much has to be left to the wisdom of the individual city with its peculiar local conditions, which are often the outgrowth of an inescapable past. It is to be hoped, however, that every city, no matter how seriously it may be handicapped by conditions inherited from a past generation, will set its face resolutely toward the goal of complete and con-

tinuous control of its public utility functions. It is only by the achievement of such control that a city can purge itself of the poison of discord and bind up its loins for the race toward the goal of efficient municipal democracy.

XI

FINANCIAL PROVISIONS OF THE NEW MUNICIPAL PROGRAM[1]

MANY writers on municipal government in the United States have dwelt mainly or exclusively on a single phase of the problem. Some have considered the question of home rule to be, not only fundamental, but all-important; and have at least given the impression that with adequate powers of self-government cities would automatically work out their own salvation. Others have discussed the organization of municipal government, laying emphasis on various plans for securing popular control, or a system for securing responsible and expert management of municipal affairs. Still others have contended that such political questions as home rule and forms of organization were of comparatively little importance; and that the most important factors in securing good municipal government were provisions regulating the conduct of the administration so as to prevent waste, mismanagement and corruption.

The National Municipal League, both in the former and present programs, has kept in mind each of these three main phases of the general problem. In the proposed constitutional provisions, an ample measure of

[1] See Appendix A.

municipal home rule is proposed. In the earlier divisions of the model charter, a plan of municipal organization is presented, aimed at securing a responsible system of government, subject to popular control, but administered by trained and experienced officials. It remains to consider the administrative provisions, regulating the finances and other specific municipal problems.

In the proposed Constitutional Amendments and Municipal Corporations Act which formed the Municipal Program of 1900 much attention was given to the conduct of municipal finances; and standards were set up in advance of the prevailing practices of the time. But the problems of public finance had only begun to be seriously considered in the United States at that date; and enormous strides have been taken since then both in the principles of financial administration and in their practical application in American cities. On the foundations of the earlier program, committees of the National Municipal League have constructed definite systems of municipal accounting and budget making; and other organizations, both official and unofficial, have also done much in the investigation of the problems and in securing the introduction and use of new and improved methods. The financial sections of the new program, therefore, include many provisions not in the former program. For the most part, these represent a logical development from the principles of the previous program; but in some respects there is a distinct departure from the earlier views. To appreciate the changes from the Program of 1900 and the provisions now proposed, a brief analysis of the main features of the former is desirable.

THE PROGRAM OF 1900

Two sections of the constitutional amendments proposed in the program of 1900 dealt specifically with finance — section 2 of Article III on municipal indebtedness and tax rate, and section 4 of the same article on accounts and reports. In regard to both debt and taxes, the principle of a state constitutional limitation was recognized, though the exact limit was not specified; but an important extension of the scope of municipal action was made possible by providing that loans for revenue producing undertakings should (under certain restrictions) not be included within the debt limit. Provision was also made for temporary loans, and the levy of taxes was required to pay interest and principal on loans not payable from the receipts of revenue producing undertakings.

A general provision requiring the keeping of accounts was followed by more specific clauses for uniform financial reports and for state examination of municipal accounts. The reports were to show receipts, expenditures and debts; and were thus based on the cash system of accounting then in use in American cities.

Section 12 of Article II of the Municipal Corporations Act provided that cities should have the same powers of taxation as were possessed by the state; but section 14 of the same article repeated the constitutional limitations on debt and tax rates.

By section 7 of Article III, the mayor was required to submit to the council an annual budget of *current ex-*

penses, which the council had power to reduce but not to increase.

Article V provided for a city controller, to be elected by the council for an indefinite term, subject to removal by the council. This article also provided for keeping books of accounts, including separate accounts for each appropriation and a separate record for each grantee of a franchise, and for annual financial statements of receipts, expenditures and debt.

Section 10 of Article V dealt with the power of the council to provide for the assessment of property, to levy taxes and to make appropriations,— the annual tax levy and appropriations to be made not more than sixty, nor less than thirty days before the date for holding municipal elections,— though the council could also pass special appropriations and transfer unexpended balances.

These provisions recognized the importance of a general grant of financial powers to cities to make effective the powers of local self-government. At the same time they affirmed the policy of state control, by definite limitations on debts and tax-rates, and by requiring financial reports and the state examination of accounts. An important step was taken towards the establishment of a budget system for current expenses, which would give the mayor control over financial policy. But the conduct of financial administration was vested in a controller independent of the elected mayor.

THE NEW PROGRAM

In the New Municipal Program, the proposed constitutional provisions relating to finances are much shorter,

and give larger powers to cities. In section 5, relating to the powers of cities, each city is authorized:

(a) To levy, assess and collect taxes and to borrow money within the limits prescribed by general law, and to levy and collect special assessments for benefits conferred;

(d) To issue and sell bonds on the security of any excess property [acquired for a local public improvement], or of any public utility owned by the city, or of the revenues thereof, or of both, including in the case of a public utility, if deemed desirable by the city, a franchise stating the terms upon which, in case of foreclosure, the purchaser may operate such utility.

Section 6 of the proposed constitutional provisions provides that:

General laws may be passed requiring reports as to their transactions and financial condition, and providing for the examination by state officials of the vouchers, books and accounts of all municipal authorities, or of public undertakings conducted by such authorities.

The powers of taxation and borrowing money are granted in general terms, and to these is specifically added the power to lay special assessments. No express constitutional limitation is provided, as in the earlier program, on the amount of municipal debt or the rate of taxation. There is, however, provision for prescribing limits by general law, which arrangement permits more flexibility to meet changing conditions, while retaining authority for such measure of state control as may be needed.

Rigid constitutional limitations on the taxing and borrowing powers of cities have often seriously hampered

needed public improvements; and on the other hand have in many cases been evaded by various devices, and have proven ineffective. The widely varying limits imposed in different states show the absence of any general agreement on this question, while arbitrary limits based, as is usual, on a percentage of assessed valuation of property are of varying and uncertain application, and at the same time take no account of the different conditions which should determine the safe amount of taxation or debt.[1]

The provision for prescribing limitations by law will permit the development of a system of state regulation adapted to varying conditions; while the requirement that such limitations shall be made by general law should prevent the misuse of the power so as to hamper or to favor particular cities for partisan or other improper motives. Such methods of regulating municipal finance have long been in force in Great Britain and other European countries, and also in Canada. A similar system has recently been established in Massachusetts for borrowing money by towns in that state; and in many states a somewhat similar system of state regulation of stock and bond issues of public utilities has also been established.

In the paragraph relating to the issue of bonds secured by specific property or a public utility, authority is given to borrow money for public improvements or public utilities without adding to the burden of taxation. The Municipal Program of 1900 excepted from the debt limit loans for revenue producing undertakings under certain

[1] Horace Secrist, "An Economic Analysis of the Constitutional Restrictions upon Public Indebtedness in the United States." *Bulletin of the University of Wisconsin, Economics and Political Science Series,* Vol. 8, No. 1 (1914).

conditions. It is believed that the provision now proposed will prove more satisfactory, both as a means of enabling cities to secure funds for such improvements and utilities and also of protecting the tax payers from possible burdens. Similar provisions have been adopted in the Michigan constitution of 1908 and in the amendments to the Ohio constitution adopted in 1912. It should be noted that the provision proposed applies to excess property acquired by condemnation or otherwise in connection with public improvements, as well as to public utilities. It thus carries out the general policy of the Municipal Program to give financial power to make effective the powers of excess condemnation and of municipal ownership of public utilities.

The section providing for financial reports and state examination of accounts, while permissive and not mandatory as in the former program, should serve the same purpose of securing greater uniformity of municipal accounts, and thus making possible more publicity and more definite comparisons of financial conditions in different cities. State control of such matters does not restrict municipal home rule over questions of local policy. It is rather a means of enabling the citizens to be informed of the condition of their municipal government and of the conduct of their municipal officials. Such control over municipal accounts is also necessary as a basis for a satisfactory regulation of municipal debts.

State supervision over local accounts and financial reports has already been established in a considerable number of states. Beginning in some of the smaller states, mostly west of the Mississippi, the most compre-

hensive system is that established in Ohio in 1902, where the accounts of all county, municipal and local authorities are supervised and examined by state officials. The results of this system in securing more understandable and more comparable statements of local finances, and in detecting and preventing irregularities and sometimes misappropriation of funds, have clearly established its usefulness; and the far reaching municipal home rule amendment to the Ohio constitution adopted in 1912 includes a provision for continuing the state supervision of municipal accounts and financial reports. Similarly valuable results have been secured in Massachusetts by the financial reports of cities and towns in that state prepared under the state bureau of labor statistics; and progress in the same direction has been made in New York, Indiana, Iowa and other states.[1]

THE MODEL CHARTER

Department of Finance.— In the Model Charter most of the provisions relating to finances are grouped together in sections 49 to 62 inclusive. One of the important changes from the plan of organization proposed in the Municipal Corporations act of the earlier program is the provision for a comprehensive department of finance, under the supervision of a director appointed by the city manager. The former program proposed a controller, to be elected by the council and independent of the mayor; and this officer was to have charge of the financial accounts and control the disbursement of municipal funds. Under the model charter, the director

[1] *National Municipal Review,* I, 446; II, 522; IV, 696.

of finance will have charge not only of the accounts and disbursements, but will also supervise the assessment and collection of taxes and other revenues and the custody of city funds.

The former plan was based on the system which prevails in American state governments and in some municipal governments, under which an auditor or controller independent of the chief executive (usually elected by popular vote) exercises a current check on expenditures, mainly for the purpose of keeping them within the limits of the appropriations. These officials have often, however, been given other financial powers. In operation this system has divided the responsibility for financial administraton; while the auditor or controller elected on the same ticket as the chief executive has not always proved an effective check; and in most cases there has been no adequate audit of the public accounts by any one not officially connected with the accounting office.

In the national government and in some cities (as Chicago, Boston and Detroit) where auditors are appointed by the chief executive, the public accounts and the current control of expenditures have been at least as well done as under the plan of an official legally independent. The model charter follows these precedents, and applies the principle of centralizing the primary responsibility for financial administration, as for other branches of municipal government, under the city manager.

At the same time provision is made (in section 62) for a truly independent audit of municipal accounts, after the close of each fiscal year, either by state officers or

by qualified public accountants selected by the council; while the council is also given power at any time to provide for an examination or audit of the accounts of any branch of the city government. It is believed that these provisions will secure more direct responsibility for financial management and also a more effective audit of the municipal accounts.

Accounts and Reports.— Section 50 provides that accounts shall be kept which shall show, not only cash receipts and disbursements, but also accrued revenues and liabilities incurred, and other transactions affecting values. Section 72 provides that separate accounts shall be kept for each public utility owned or operated by the city, so as to show the true financial results. Financial reports are required to be prepared for each quarter and also for each fiscal year.

These provisions lay the foundations for a modern system of municipal accounting with more definite requirements than in the former program. At the same time no attempt is made to prescribe in the charter a detailed system of accounts. The specific accounts to be kept should be devised with reference to each city and the provisions for uniform municipal reports; and should be amended and revised from time to time with the progress of public accounting.

In section 77 it is provided that all accounts are records of the city and shall be open to the public under reasonable regulations, except such records where the disclosure of information would tend to defeat the lawful purpose of the office or department.

The Budget.— The provisions in regard to the budget

(section 51) are much more explicit than those proposed in the program of 1900. The responsibility for preparing the annual budget is placed on the city manager, which corresponds to the duty placed on the mayor in the earlier plan. But where the former proposal only required a budget of current expenses, the Model Charter provides for an itemized statement, based on detailed estimates from the several departments, of appropriations recommended both for current expenses and for permanent improvements, and also an itemized statement of taxes required and other estimated revenues, with comparative statements for the current and next preceding fiscal years, and a statement of the financial condition of the city. This budget is to be submitted not later than one month before the end of the fiscal year; copies are to be printed and available for distribution not later than two weeks after its submission to the council; and a public hearing must be given before action by the council. These provisions call for a comprehensive financial program for each fiscal year, and for publicity and discussion before definite action is taken. It is to be expected that the director of finance will actively coöperate with the city manager in preparing the budget; but the responsibility for the recommendations will rest on the city manager.

The annual appropriation ordinance is to be passed (section 52) by the council not later than one month after the beginning of the fiscal year. This must be based on the budget submitted by the city manager; but no positive restrictions are placed on the power of the council to increase or add to the terms in the budget, as in the

program of 1900, except that the total appropriations may not exceed the estimated revenues of the city. This important difference is due to the general principles of the city manager plan. Under this plan the council is the final authority in the municipal government; the city manager is the expert adviser and executive agent of the council, but is not an independent officer with legal power to interfere with the council in determining matters of municipal policy in financial or other affairs. While therefore provision is made for preparing a comprehensive executive budget, which the council is to act on as a whole, the power and responsibility of the council for the financial policy adopted are not limited. It should be noted that the former program did not in any way restrict the power of the council to initiate and pass appropriations outside of the budget for *current* expenses, and had no provisions for considering such appropriations as part of a comprehensive fiscal program.[1]

No attempt is made in the charter to define the extent of detail in which appropriations shall be made. The estimates and budget are required to be detailed and itemized. But the degree of segregation in appropriations is left to be worked out as an administrative policy.

Provisions are also made for passing temporary appropriations for current expenses, pending the passage of the annual appropriation ordinance, and for the transfer of unused balances or the appropriation of other avail-

[1] It is probably wiser in any plan of organization to permit the legislative body to increase appropriations proposed in the executive budget (perhaps in some cases restricted by the requirement of more than a majority vote) than to authorize it to initiate and pass special appropriations outside of the regular budget, as has been recently proposed in some states.

able revenues. Authority for these purposes is essential in the practical conduct of municpal affairs; and it is important that the charter should provide for it under suitable restrictions to prevent its abuse.

To make effective these provisions relating to the budget and appropriations, it is further definitely provided that no liabilities may be incurred except in accordance with the annual and temporary appropriations or under continuing contracts and loans authorized by the charter.

Levy and Assessment of Taxes.— Section 53 provides for an annual tax levy to meet the appropriations and amounts required on account of the city debt, less the estimated amount of other revenues, and with an allowance to meet commissions, fees and uncollected taxes.

The methods for the assessment, review and equalization of property for taxation are not prescribed by the charter; but are left to be worked out by law or ordinance. Provision is made, however, that all property subject to *ad valorem* taxation shall be valued at its fair market value, and for the separate valuation of land and improvements, the latter to be valued at the amount by which they increase the value of the land.

Special Assessments.— Several home rule charters adopted by Ohio cities have included a chapter on special assessments, prescribing a definite method of procedure. It may be questioned whether a uniform system of special assessments is advisable for all cities; and in any case the difficulties of formulating provisions adapted to the different laws and practices now in force made it impossible to propose a detailed plan in the Model Char-

ter. In section 55, however, the council is authorized to provide by ordinance for a system of special assessments and the main principles of such a system are prescribed. Special assessments may be used for public improvements, including public utilities. For permanent works payments may be distributed over a period of not more than ten years. Provision must be made by ordinance for levying and apportioning such special assessments, for the publication of plans, for serving notice on the owners of property affected and for hearing complaints and claims before final action is taken.

Bond Issues and Other Loans.— Sections 56 to 58 deal with the subject of loans. Money may be borrowed only by the issue of bonds or temporary loans as authorized and limited by the charter; and the credit of the city may not be given or loaned to private individuals or corporations, except for the relief of the poor.

Bonds may be issued on the credit of the city up to a percentage of the assessed valuation to be prescribed in the charter, but which may also be determined by general state law. Bonds may also be issued to be secured by the property or revenues of any public utility. Public notice of at least two weeks must be given before final action on any ordinance providing for a bond issue; and such ordinance must either have the approval of two-thirds of all the members of the council, or be submitted to a referendum of the electors.

Every bond issue must be payable in equal annual serial installments, within a term of years not to exceed the estimated period of the utility of the improvement, with a maximum limit of thirty years, though it is

suggested that this limit may be extended to fifty years in cities where subways and other improvements of extraordinary cost and permanency may be needed. Provision must also be made in the bond ordinance for an annual tax levy to meet the installments of interest and principal.

Temporary loans in anticipation of taxes are authorized not to exceed a definite percentage of the receipts from taxes for the preceding fiscal year, and to be repaid from the receipts of the fiscal year in which they are issued. Provision is also made for renewing outstanding floating debt incurred prior to the adoption of the charter, by loans payable with interest in not more than five years. For all temporary loans there must be public notice of at least two weeks before final action by the council, and the loan must be approved by two-thirds of all the members of the council.

These provisions, it is believed, give adequate authority to the city government to borrow funds needed for permanent improvements and also for temporary emergencies; while at the same time providing restrictions to prevent the abuse of the borrowing power. Publicity is required in all cases; and limitations are suggested both for the amount and duration of loans. The alternative of a two-thirds vote of the council or a popular referendum on bond issues seems preferable to the definite requirement of either. The use of serial bonds is prescribed in preference to the sinking fund method of payment; and a tax levy to meet the payments is definitely required. The provisions for temporary loans seem necessary to meet conditions which prevail in most

cities; and the conditions imposed should keep the exercise of this power within reasonable bounds.

Custody of City Funds.— Section 59 provides that the collection of all city taxes, special assessments and license fees shall be made by the department of finance. In some states, however, exception may have to be made for taxes which by state law are collected by town, county or state officers. Minor fees for permits and privileges are not covered by the above provision; but it is definitely required that all moneys received by any city officer or employee in connection with the city's business shall be paid promptly into the city treasury. It is further provided that all city moneys shall be deposited with responsible banking institutions, furnishing security and offering the highest rate of interest, and that all such interest shall accrue to the city. These provisions are intended to prevent the holding of municipal funds as private accounts and the payment of interest to municipal officials. The council is required to provide by ordinance for the prompt and regular payment and deposit of city moneys as provided in this section.

Contracts and Purchases.[1]— Among the most important sources of waste and mismanagement in municipal administration are those connected with contracts for public works and the purchase of materials and supplies. Many city charters and state laws contain elaborate provisions on these subjects, some of which are so drastic as to hamper the public officials in securing the best results for the city, and at the same time lead to means of

[1] Nathan Mathews, "Municipal Charters," ch. 8.

evasion which destroy their effect. Difficulties in connection with contracts have caused some officials to ask for larger powers for doing public work by direct labor; and this in turn opens the door to the abuses of spoils politics.

In the Model Charter provisions are proposed for the purpose of preventing abuses without imposing burdensome restrictions. Public improvements costing more than one thousand dollars are to be executed by contract, unless a specific work is authorized by the council based on detailed estimates. All contracts for more than one thousand dollars are to be awarded to the lowest responsible bidder, after public advertisement and competition; but to avoid the danger of collusive bidding, the city manager is given power to reject all bids and re-advertise.

In the case of contracts which involve payments from the appropriations of more than two years, special provisions are made. Such contracts (for water supply, street lighting, garbage collection and disposal, etc.,) may not be made for more than ten years, except public utility franchises; and are subject to some of the requirements for a public utility franchise. At least two weeks' public notice must be given before final action; and the contract must be approved by two-thirds of the council or be submitted to a referendum vote of the electors. Such contracts involving obligations for a number of years have some resemblance to public utility franchises and bond issues; and should be subject to similar restrictions.

To prevent collusion between city officials and em-

ployees and outside parties in contracts and purchases, it is provided (in section 78) that no member of the council nor any officer or employee of the city shall be financially interested, directly or indirectly, in any contract with the city, or in any sale to the city, except as a member of the city government, or as owner of a limited amount of the stock of a corporation. Any willful violation of this provision will constitute malfeasance in office and cause the office or position to be forfeited; and if done with the knowledge of the persons or corporation contracting with the city makes the contract voidable.

No definite requirement is proposed for a central purchasing system. While the advantages of a greater degree of centralized purchasing were realized, it was not considered advisable to place a general compulsory provision in the city charter; and this question has been left to be worked out by ordinance as a matter of administrative policy.

Payments.— Control over the disbursement of city funds is regulated by section 61. This places on the director of finance the duty, imposed on the controller in the former program, of examining bills and other claims against the city and of issuing warrants on the city treasury for such claims as he finds to be legally due and payable, for which an appropriation has been made and for which funds are available. The Model Charter, however, also requires vouchers to be certified by the head of the appropriate department or division of the city government, and warrants to be countersigned by the city manager. The director of finance may require

a sworn statement of any claim, and may investigate any claim with power to examine witnesses under oath. These provisions should furnish security against expenditures not properly authorized or for which the city has not secured adequate returns.

The provisions of section 62 relating to the audit of accounts have been noted in connection with the general discussion of the department of finance.

XII

CITY PLANNING

When the Municipal Program of the National Municipal League was adopted in 1900 the term city planning was almost unknown in this country. The art itself was even more rare. Rarer still were legally constituted bodies with adequate control of even the street layout, much less of the city plan as a whole.

In the last ten years there has been a great awakening to the value of intelligent city planning. Lagging behind this, but still hopeful, has been a growing appreciation of the need for a city planning authority in each municipality, possessed of, or having at its command, knowledge of the principles and practice of so controlling the physical manifestations of city growth as to meet the needs of the citizens and a proper ideal for the city as a whole. To-day, a hundred cities in the United States and a goodly number in Canada have city planning boards. Most of these boards have quite limited powers and are not so keyed into the city government as to insure that their recommendations will ever be deliberated upon, adopted or rejected.

A city, as well as a house, must be built and perchance remodeled from time to time in accordance with a well conceived plan if it is to serve the manifold needs of its inhabitants in these twentieth century days. A city plan

is far more than a surveyor's map or plat showing a gridiron of streets and the subdivision of land into the largest possible number of building lots. A real city plan meets present and foresees future needs. It is a complex of designs for big engineering and social utilities and services so worked out that each fills the particular needs it is designed to meet and all unite to form a single harmonious whole.

Although city planning is largely engineering in character, but few American engineers have yet grasped its broader aspects. This is chiefly because they have not been given the opportunity to do so. They have been employed to deal with a single element at a time, by city governing bodies themselves of limited vision and often having only piecemeal authority. The broader vision of city planning in America has come from the architects, and especially the landscape architects, rather than from the engineers. Unfortunately, embellishment, adornment, beautification, rather than fundamental knowledge of the city plan and its elements, dominated most of the architects and landscape architects who were the forerunners of city planning in the United States. The "city beautiful" was the cry and to it there was so little popular response that scores of plans and reports for "beautifying" this city and that never got beyond the paper on which they were drawn or printed.

Meanwhile, city after city has continued to grow haphazard — often not even mapped, much less planned. Such planning as has been done has been nearly all piecemeal, isolated, uncorrelated. Streets occupying 20 to 40 per cent of the area of the city, which must serve or fail

to serve future generations, have been laid out to meet the real or fancied temporary need and greed of the land speculator. Water-works have been built at one time, sewers at another, with no regard for the city plan as a whole. Utility companies with an eye solely to their own gain have occupied the street surfaces, the ground beneath and the air above in accordance with their own notions of transportation, gas, electric light, telephone and telegraph service, and with utter disregard of a unified city plan. All this has resulted from a division of municipal powers between city councils, and a multitude of unrelated and uncontrolled boards, commissions, departments and bureaus on the one hand, and on the other from the turning over of public utilities to private corporations to do with as they will. Independent municipal departments have had no continuing policy as to the elements within their control. The city as a whole has not harmonized the elements; has had no fixed policy. The utility companies may have done better in working along fixed lines, but those lines have been of their own fixing and have not been under adequate, if any real, municipal control. In short, there has been no city plan, and so of course no program for its realization.

Almost side by side with the growth of interest in city planning in the United States has been the inception and spread of the commission plan of city government. The commission plan has replaced large city councils and numerous independent boards and departments and bureaus by a single small legislative and executive body. This tends towards a unification and correlation of action affecting the city plan, but in itself it has not often gone

far towards adequate city planning. Under the straight commission plan the affairs of the city are divided more or less scientifically into five groups and a commissioner is made responsible for each. This tends towards five-headed government, which though better than having 12 or 20 or 50 heads, does not give unified results, even with the whole commission or council of five passing upon all questions of policy and all appropriations. Moreover, and a great evil, each of the five commissioners soon qualifies in his own and the official and popular mind as an "expert" by virtue of his particular commissionership. City engineers and other technically trained men are relegated to the rear under the commission plan by executive heads chosen by the chance of popular vote.

The commission-manager plan makes the commission simply a policy-determining body, substitutes a single chief executive for the five executive heads, and brings trained administrative and technical men to the front in control of executive affairs.

It might be thought that under the commission-manager plan city planning would be fully cared for by establishing a city planning office, headed by an expert under the general administrative direction of the city manager, the city planning office simply carrying out policies formulated by the commission. Ultimately this may prove to be wise for many if not most cities; for a few cities it might do even now; but as a rule there seems to be need for a city planning board even under the commission-manager plan. The reason for this conclusion is that, as matters stand to-day, city planning in the United States is too young, too much an art in the formative

period, too little a science, too much a series of elements yet to be worked into a harmonious whole, too closely related with vital things in the life of the people that have not yet found full definition, to be entrusted wholly to a political body, subject to sudden changes in membership and burdened with a thousand complex problems. It is, of course, undeniable that planning involves so many questions of municipal policy and such large expenditures of money that, especially under the commission plan, the ultimate decision as to policies must rest with the commission. At the same time city planning is so technical a matter that it demands the guiding minds of those specially qualified by education, observation and experience to pass upon the many questions involved.

For the foregoing reasons, the model city charter provides for a city planning board, but one which keys into the general executive staff of the city in membership; makes the city engineer chief engineer of the board; puts all other branches of the city government at the service of the board in the way of giving desired information; compels the commission to act upon (accept or reject) all recommendations of the board, but leaves the commission supreme in the final determination of city planning as of all other policies and expenditures.

In composition, the majority of the city planning board consists of "citizen members chosen because of their knowledge of city planning," while the minority consists of the director of works and utilities, the executive subhead under whom comes the works and services most closely related to the city plan. It may be noted that the model charter provides that the director of works

must be an engineer, selected like all the directors because of "his education, training and experience in the class of work he is to administer." The city planning board, it will thus be seen, is a board of specialists or at least amateurs in city planning, with citizen members in the majority so as to keep close to the people, and with the city executive staff represented by the man in charge of public works and utilities,[1] so as to bring into the board ultimate knowledge of the affairs with which it is chiefly concerned. But, as already stated and as appears more definitely later, the city planning board has only powers of recommendation and advice, the commission being supreme in city planning as in all other matters of policy and expenditure.

The duties of the city planning board are stated in the most broad and comprehensive way. They are threefold:

(1) "To keep itself informed of the progress of city planning in this and other countries; (2) to make studies and recommendations for the improvement of the plan of the city with a view to the present and future movement of traffic, the convenience, amenity, health, recreation, general welfare and other needs of the city dependent on the city plan; and (3) to consider and report upon the designs and their relations to the city plan of all new public ways, lands, buildings, bridges, and all other public places and structures, of additions to and alterations in those already existing, and of the layout or plotting of new subdivisions of the city, or of territory adjacent to or near the city."

[1] In large cities having directors of both works and utilities, there will be three citizen members instead of two.

More briefly, the duties of the board are: (1) To keep posted on all phases of city planning; (2) to say how the city plan may be improved; (3) to pass upon everything orignating elsewhere that would affect the city plan.

Ample means for making (2) and (3) effective are provided. It is only necessary to repeat here, for the sake of emphasis, that anything and everything affecting the city plan must go to the board " for report and recommendation " and that no action by the council affecting the city plan " shall be legal or binding until it has been referred to the board and until the recommendations of the board thereon have been accepted or rejected by the council."

To keep before itself, the council and the public the recommendations which it makes, the board must summarize in each of its annual reports not only its recommendations for that year, but also the year's actions of the city council on the board's recommendations of that and of earlier years.

One of the most important and by all odds the most novel provision of the city planning section is the one which calls for a three-year program of improvements to the city plan. Each annual report of the board must outline such improvements year by year for three years to come, " with estimates of the cost thereof and recommendations as to how the cost shall be met."

This provision is designed to remove or lessen in some measure one of the greatest weaknesses in city government in the United States — the lack of a well-considered, far-seeing program of improvements, including the way of meeting the bills. Here and there a city may be

found which has a program for water-works, or sewerage or some other line of improvement, but rarely does a city bring all its proposed improvements into a single program, and revise and extend the program year after year.

For effective work a city planning board must have a competent secretary. The model charter provides "that the board shall appoint as secretary a person of skill and experience in city planning." Leeway is here given as regards the time the secretary must devote to his work. This would naturally depend upon the size of the city and upon the amount of work put upon the members of the board.

Obviously, consulting service may be required at any moment. Provision is therefore made for the employment of "city planning experts as need may arise."

As has already been set forth, the board has as one of its members the director of works and utilities. This is to tie the board into the executive department of the city. It is not to be expected that the director-member (unless in the smaller cities) will perform engineering work for the board, both for lack of time and because it would be incompatible with his functions in the board and as a director. To fill such needs as may arise the model charter provides: "The city engineer shall serve as chief engineer of the city planning board, and it shall be his particular duty to make recommendations designed to bring all the engineering works of the city into harmony as parts of one comprehensive plan."

To coördinate still further all the activities of the city, the executive health officer is called upon to give the board pertinent advice as to the relation of the city plan to

health, and to make this coördination complete, the board is given power to call for needed information at any time from any branch of the city government.

For the benefit of any readers who may wonder why no mention is made of the aesthetic side of city planning, it may be explained that so far as a city charter is concerned the artistic phases of city planning may safely be left to a city planning board possessed of the powers and duties for which provision has been made. In a footnote to the model charter it is suggested that in some cities it may be desirable to confer on city planning boards the powers held by art commissions in the United States. The consensus of opinion among the most experienced authorities on city planning, however, is that the two matters should be kept separate. It is a noteworthy fact that but few cities have art commissions. It has already been noted that one of the early setbacks to city planning was due to over emphasis of its relation to the "city beautiful." The beauty of a city lies chiefly in the adaptation of the design of its various elements to the ends which they are intended to serve and in making the most of the beauties nature has bestowed upon the site instead of marring them unnecessarily. Some of the elements of the city plan have aesthetic features as their chief aim, but most of the elements are primarily utilitarian.

If any object that the city planning section of the model charter is too brief, they are asked to understand that the charter itself is brief — designedly a short charter — and that the city planning section is necessarily confined to a few fundamentals, applicable to cities of diverse size and ideals.

It may not be amiss to point out that although the city planning sections of the model charter were drawn to fit into the commission-manager plan they are equally suitable for almost any type of charter. Even those who still believe that there is safety in a division of powers may readily adapt the sections to fit to that belief by going as far as they choose in giving the city planning board control over the city plan.

These sections being a part of a municipal home rule charter they contain no mention of state control of city planning. The fact is, however, that many of the states do exercise more or less control of various things entering into or affecting the city plan, although chiefly as regards quality or rates of service. The dominance of city planning by the Local Government Board of Great Britain, under the famous Town Planning and Housing Act of 1909, is worthy of mention, as is also the fact that the Canadian Government has in its employ one of the leading British authorities on city planning — Thomas Adams, who went to Canada to serve as town planning adviser, under the Conservation Commission.[1]

[1] Finally, a few references may be given. A somewhat extensive report on the organization, powers and duties of city planning boards may be found in the 1915 Proceedings of the National Conference on City Planning. The most recent American books on city planning are Shurtleff, "Carrying Out the City Plan"; Nolen, "City Planning"; and Lewis, "The Planning of the Modern City." Hundreds of references may be found in a "Classified Selected List of References on City Planning," by Theodora Kimball. A short list, also prepared by Miss Kimball, appeared in "The American City" for May, 1916. A summary of city planning accomplishments and projects in cities of the United States having 25,000 population or more and in some smaller places has been published by the Committee on Town Planning of the American Institute of Architects, with the title, "City Planning Progress, 1917." M. N. B.

XIII

BUSINESS MANAGEMENT FOR CITY COURTS [1]

A COMMITTEE of the National Municipal League was appointed in 1913 to draft a model municipal court act. The time was propitious for such work; the success of organized courts in several cities was attracting attention to something new in civic life and in the administration of justice, and there was being created at that time the American Judicature Society, a national organization devoted to efficiency in judicial administration. Harry Olson, chief justice of the Chicago Municipal Court, the pioneer organized court, was made chairman of the committee and shortly after became chairman of the board of directors of the American Judicature Society. There were appointed to serve with him: Thomas Raeburn White of Philadelphia, Judge Wilfred Bolster of Boston, A. Leo Weil of Pittsburgh, Prof. Roscoe Pound of Harvard Law School, and Hastings H. Hart, Raymond V. Ingersoll and Judge W. L. Ransom of New York; the writer became secretary of the committee as well as secretary of the society.

The first work undertaken by the judicature society was the drafting of a model act to establish a court for

[1] The following articles on this subject have appeared in the *National Municipal Review:* "The Model Municipal Court," Herbert Harley, Vol. III, p. 57; "The Municipal Court of Cleveland," Raymond Moley, Vol. V, p. 452.

a metropolitan district, because the society realized that the most insistent need with respect to court reform lies in the large cities of the country. For such work the society possessed unequaled resources. It appropriated liberally to permit of employing the most proficient draftsman. The Municipal League's committee became affiliated with the society and assisted in this phase of its work. Its formal report, comprising a legislative act with profuse commentary, is found in bulletins IV A and IV B, American Judicature Society. It is the purpose of this article to explain briefly the nature of this model act and to account for its principal features.

The act is a judicature act proper, intended to create judicial machinery suited to modern needs, and containing as little as possible of judicial procedure. The society is now engaged in drafting a schedule of procedural rules which will supplement the court act. The two phases of the work are clearly separable. The reader's attention is now called to the mechanics of judicial administration.

The act provides for the establishment of a district embracing the large city and its suburbs. In most cases the county in which the city lies would serve well as the metropolitan judicial district. Inasmuch as the difficulties of judicial administration increase with the size of the city the act is shaped to meet the needs of the largest cities, but may readily be adapted to the simpler conditions of the less populous community.

All tribunals presided over by lay judges are abolished. All other tribunals within the district, except federal and appellate courts, are consolidated to make the new court. The judges of the courts thus consol-

idated become the first judges of the new court. Judges formerly exercising full trial jurisdiction become senior judges and those who have served in any local or municipal court of limited jurisdiction become junior judges.

Junior judges, as well as senior judges, are given by the act complete authority to hear and determine every cause, equitable, legal or criminal. This permits of complete adjudication of every cause by the judge in whose branch it comes on for trial.

This consolidation is the necessary step preliminary to establishing a scheme of administrative authority and responsibility and providing for specialization. Before the court can become organic it must become unified.

A great variety of causes will be tried in such a court. It is possible to group them into a few broad classes. The act makes five such general divisions based upon the nature of the business to be transacted: (1) The equity division. (2) The probate and domestic relations division. To this division come also divorce and juvenile court matters. (3) The civil jury division. (4) The civil non-jury division. (5) The criminal division.

Every division must have a presiding justice whose duty it will be, besides hearing causes, to supervise calendars and assign judges of the division to particular branches within which specialization is carried out to the fullest degree. The governing body of the court will naturally comprise these five presiding justices and the chief justice. To make a judicial council of seven, one other senior judge is added. This is a simple and natural organization of administrative authority. It coördinates the entire structure; at a meeting of the council every

division is represented; in every division the authority of the council is always present in the person of the presiding justice.

The judicial council is given power to regulate practice and procedure, to prescribe the duties and jurisdiction of masters, and generally to manage the business of the court and all divisions and branches. The chief justice presides over the council and is its chief executive, while the presiding justices execute its will in their respective divisions. One check is imposed upon this wide authority. It is a check of a democratic nature. A majority of the senior judges, with the concurrence of the chief justice, at a meeting for that purpose held, may exercise the powers of the council and annul or alter any of its rules. The management of the court must be in accord with the views of a majority of the senior judges.

The judges are permanently assigned to places in the various divisions and can be transferred to another division only by concurrence of the chief justice and the presiding justice of the division affected. But any judge "not for the time being occupied in the transaction of any business assigned to the division to which he may be attached" may be transferred by the chief justice to any other division for a period not exceeding six months. This protects the individual judge from too frequent shifting and still affords such flexibility that all judges may at all times be kept at work, so that there will never be congested dockets in one division and idle judges in another. It permits the court to remain always at a state of maximum efficiency despite seasonal variations in the nature of the business submitted.

Within each division there is opportunity for the highest degree of specialization. Special branches are established by administrative orders and judges best qualified for these branches are assigned by the presiding justice of the division. The right man will find the right work, not by some happy chance, but by conscious direction, and there will be specialist judges with full jurisdiction instead of special tribunals of limited capacity to adjudicate.

Of course it must be understood that the direction of the activities of judges extends only to administrative matters; in the exercise of the purely judicial function every judge is absolutely independent, answerable only to the appellate courts of the state, as at the present time. The judicial council can make rules to govern classes of causes, but can never interfere in the decision of any particular cause. The specific decison rests with the trial judge and the appellate tribunals established by the state.

The simple organization thus presented is supplemented by two related features which are necessary to responsible and intelligent operation, namely, meetings and reports. Meetings of divisions are to be held at least once a month except in August. The entire court will meet at least once every year. At these meetings there will be discussion of the operation of rules and consideration of complaints. At the annual meeting the chief justice shall present his detailed report. The meetings afford the judges opportunity to express themselves, to share in the general responsibility of management, and to receive mutual criticisms.

The chief justice will presumably receive weekly or

monthly reports from presiding justices. His annual report must contain full statistics and information concerning the state of all the branch court dockets. The data must be presented under the five following heads: (1) Litigation. (2) Efficiency of personnel. (3) Social. (4) Criminal. (5) Financial.

In certain branches a great deal of judicial time and energy can be saved by employing skilled assistants to judges. To meet this need the act provides for masters, who will relieve judges of much ministerial labor, conserving their energies for the actual trial of causes. The judges will be responsible for the work of masters. Lack of proper control has prevented the development and success of the plan in this country. Under responsible direction economy can be accomplished through masters who will become highly expert in specialized fields, and who, by reason of long tenure, can be secured for lower salaries than judges.

The act provides for a single clerk to be appointed by the judicial council and to hold at its pleasure. Branch clerks' offices are to be established by the council wherever needed. The chief justice and council are given powers as to the selection of deputy clerks and bailiffs so that they can provide an efficient staff and control their conduct. Doubtless this power would be exercised according to civil service rules to be established.

There is a provision for pensions for judges who shall have served a specified period and attained the age of seventy; also for placing them upon the retired list after they shall have become eligible if the interests of the court call for their retirement. A novel plan for grading

salaries is presented: it provides that there shall be an increase of salary for each three years of service up to a certain maximum, thus recognizing the value of long experience. Other sections forbid the making or soliciting of contributions for political purposes and provide penalties.

The act clears the way for rational procedure by abolishing all existing procedure as statute law and continuing it as rules of court alterable under certain formal methods by the judicial council. This affords necessary freedom to simplify procedure without any sudden shock to established custom. Step by step, in accord with definite results, the old complexity and ambiguity of procedure can be shaped skillfully, by expert and responsible minds, to practical and economic needs. The council is of course still subject to legislative control, but experience in jurisdictions where this plan has been tried for many decades proves that the legislature acquiesces in expert control in a field in which its own work has as often been as crude as it always has been rigid.

The act as drafted is suited to the needs of a city of a million or more people. Where the entire body of judges is less than thirty there should be fewer fixed divisions to avoid the possibility of structural rigidity. With twenty judges it would probably be as well to have no fixed divisions, but to permit specialization to rest wholly upon administrative orders. If there are no more than fifteen judges the council may be dispensed with and its powers apportioned between the chief justice and the entire body of judges acting as a committee of the whole. It would be important in such case to protect the office of chief

justice so that the incumbent may be a real business manager. This can be done by reserving to the head of the court the power to establish calendars of all kinds and assign individual judges. It is a comparatively easy matter to adapt the act to the needs of any community.

The act was first published in tentative form in March, 1914, as Bulletin IV, A. J. S. A report was made to the National Municipal League concerning the work at that stage.[1] The bulletin was circulated among the 300 judges, lawyers, teachers of law and political scientists who constitute the council of the American Judicature Society. An important body of criticism was received. This was published for the benefit of the directors of the society and the members of the league committee, and formed the basis for revision by the draftsman, whose work was discussed most minutely before final publication.

Concerning the organization features, divisions of business, and the distribution of administrative power appearing in Bulletin IV B we have sufficient experience to be reasonably positive. These are practical matters and there can be little fundamental disagreement concerning them. But in the political realm, comprising especially the selection and retirement of judges, there is in different sections such divergence of experience and theory that it is necessary to submit various proposals. These are found in Bulletin IV A.

In certain states the selection and tenure of judges is on a satisfactory basis. All that is needed to get the best results is a workable organization with conspicuous leadership. But in many states judges are selected by

[1] See *National Municipal Review*, Vol. IV, page 181.

hit or miss methods and the worst results are observed in large cities. What is obviously needed is the expert selection of judges and reasonable security of tenure. In view of present shortcomings it is but natural that the people should insist upon direct participation in the selection of judges. In such communities there is the greater reason for providing efficiency organization because the responsibility which must be demonstrated before the voters will consent to expert selection of judges can be attained in no other way.

Four methods of selecting judges are presented. The first is appointment by the governor with removal by the legislature, as in Massachusetts.

The second is an attempt to improve the tenure of elected judges by providing that at the end of their terms they shall stand for re-election "on their records" rather than participate in a free-for-all race, the consequence of which too frequently is the retirement of an able and experienced judge and the choice of one much inferior to him. To accomplish this, it is provided that the name of the judge, if he is willing to serve longer, is to be placed on the ballot with the query: Shall he be continued in office? Thus might be eliminated one of the obvious sources of waste and accident in the judiciary, while preserving popular election of judges.

The third plan provides for the appointment of judges by the chief justice of the metropolitan court, who is to be elected for a relatively short term and during that term fill such vacancies as may occur. Appointments are to be for a definite period, at the conclusion of which there shall be submission of the name of the judge to a referen-

dum vote, as above explained. If approved, the judge should hold for a longer term, and a second approval should confirm him in office to the end of his judicial career.

The fourth plan provides for the appointment by the chief justice subject to removal by impeachment, by legislative vote, or by the judicial council for causes specified.

It will be observed that appointment by the chief justice conserves the principle which should govern in judicial selection, namely, that the choice should be made by an expert authority responsible for the due administration of justice. Until recently we have never had such an authority, but the chief justices of the organized courts which are being established in our cities fill such a rôle. There is every reason why such a judicial manager, for that is what he essentially is, should himself be chosen by popular vote. Since the duties of the chief justice are largely administrative there are strong reasons for expecting good results from popular choice. The voters would have the advantage of a short ballot and could pass upon the qualifications of candidates for an administrative position with far greater assurance of success than they now pass upon highly technical juristic qualifications.

There are a great number of ways of selecting judges, and many of them may be trusted to yield better results than the customary primary and election in the large city.[1] An interesting modification of two of the foregoing proposals is now before the Louisiana legislature; a draft

[1] See Bulletin VI, A. J. S., pp. 29–52; Bulletin X, A. J. S.; also "Taking Judges Out of Politics," *The Annals* of the American Academy of Political and Social Science for March, 1916, pp. 184–196.

of constitutional changes framed during a year's work by a strong committee of the Louisiana bar association provides for appointment of all judges by the governor for a definite term and submission of their names on a ballot without competition at the close of their terms of service.

As a check upon appointment by the chief justice it is proposed that choice should be made of all or part of the judges from an eligible list containing twice as many names of lawyers as there are places in the court. Names would be placed upon this list as vacancies occur by the judicial council.

Such are the salient features of the model act. Let us take a brief look at the existing situation. In no city in the entire country is there a judicial system which could conceivably be created as a matter of conscious choice. In no city is the administration of justice efficient to a degree which may reasonably be demanded. In most cities it is flagrantly wasteful; even where there are enough judges there are unsconscionable delays. The time of judges is squandered and their energy dissipated. Litigants are kept waiting for months and years when they should be served in days. The supposedly inferior causes, both civil and criminal, are in hands often notoriously unfit. There is, as a rule, no unified management of the vast amount of judicial machinery which has been created in a fruitless effort to keep abreast of the growth of population, increase of business, and complexity of tribunals.

It would be as sensible to expect efficient results in a department store lacking management as in our typical congeries of city courts. At the present time we are

doing our judicial business in a number of small shops.[1] We are inured to delays and costs and disappointments to such an extent that we have no conception of the benefits readily attainable from plain business management. Nobody could possibly create such a tangle. It is a heritage. Our cities have grown up like magic and the dominant force is still centripetal. One-fourth of all our people live in cities of more than 100,000 population. Many of the vestiges of outgrown village judicial machinery encumber the urban field.

The attempt to reduce delays by providing more judges is everywhere proving ineffectual. When two judges are added to a bench of four the court is given approximately fifty per cent greater capacity. Not so when ten judges are added to a bench of twenty which is lacking in concentrated and responsible direction. The law of diminished returns works inexorably. Take a typical unmanaged court of forty judges and the addition of ten more may not increase the output in any observable degree.

The attempt to get specialized effort is resulting more and more in a patchwork system of separate tribunals, which, without unified management, cannot possibly yield efficient results.

We have persistently followed a wrong policy in attempting to force tolerable results from an impossible machine. In an endeavor to force the individual judge to do the right thing in the specific case we have enacted thousands of sections of procedural law until finally the hands of the judge are so effectually tied that often he

[1] See address of Edward A. Harriman on efficiency in the administration of justice, Conn. State Bar Asso. Report 1915.

cannot do the thing required for simple justice — the thing he would like to do.

We have recognized the possibility of injury from faulty administration of rules and provided for remedy through appeal. This opens new opportunity for injury to the litigant. But nowhere in the judicial system is any provision made for removing the causes of blundering.[1] Dissatisfaction with judicial decisions is small and of little warrant compared with the dissatisfaction which should be realized over the absence of simple business management in the operation of the courts.

In the enforcement of penal laws we are a spectacle among the nations called civilized. We pile ordinance upon ordinance and statute upon statute, but power and responsibility for the enforcement of law is so scattered that the result is increase of crime and general disrespect for law and government.

The new and vital theory of court reform looks to the ultimate unification of all of the courts of a state. A start must be made somewhere in introducing order and system and the large city is the best place to begin because there the need is greatest. The larger plan, embracing all of the judges of the state, will still require special organization within metropolitan districts. If the city court is established first there will be no difficulty whatever in making it a department of the unified state court. It will still need a great deal of local autonomy with respect to administration.

The idea that courts must be charged with respon-

[1] See "Wanted a Chief Judicial Superintendent," by John H. Wigmore, *Illinois Law Review* for May, 1916, pp. 45–49.

sibility for the orderly evolution of procedure through court rules is now generally accepted after half a century of statutory regulation and varying degrees of failure in most of the states. It will not be long before the ineffectual method will be generally abandoned. As the change is made it is very important that there be provided in the large cities courts so organized that they can perform their proper rôle of developing procedure in accord with urban needs. One of the present faults arises from the fact that procedure has been enacted to fit both city and rural courts and the legislatures which frame these laws are commonly unacquainted with metropolitan needs or wholly out of sympathy with them.

The model court act recognizes the need for establishing a judicial career with provision for advancing a judge from the position of junior to that of senior judge and finally to the presidency of a division if the individual evinces talent. At the same time the practitioner of high standing, a master of some branch of substantive law, may be taken in directly as a senior judge and given an important position with appropriate salary. He can be guaranteed service in the field for which he has fitted himself by long training.

The organization as created also permits of temporary assignment of the ablest member of the court to a department which is commonly, but mistakenly, supposed to be less important, if not trivial. Investigation reveals the undoubted fact that many of the judicial functions heretofore relegated to confessedly inferior judges are of the highest concern in a social and political way. Consider the small civil causes which form the only point of con-

tact with the court that a large majority of the population will ever experience. Because only small amounts are involved in such controversies it is economically impossible to try them with a jury and rules of evidence which require half a day or a day to ascertain whether Mary Jones is entitled to half a week's lodging or must pay half a month's rent. The employment of counsel for hundreds of these causes is a burden to the self-respecting lawyer and a mockery to his client. A capable judge can dispose of these causes to the satisfaction of litigants at the rate of four to the hour, but litigants will not accede to this idea except they have confidence in the legal ability and impartiality of the judge.

A mistaken attempt to work out economy in such causes through small salaried and palpably inferior judges defeats itself. The privilege of appeal guaranteed to the small litigant, as shown so clearly by Judge Taft, is an insult.[1] All present experience negatives the theory that economy is to be obtained by employing inferior judges for small causes. Economy lies in getting a right and lasting adjudication *in the first instance* and this requires *exceptional men* for judges.

The only light that we have in this field is afforded by efforts originated in two of the organized courts, those of Cleveland and Chicago.[2] Without the authority to segregate causes and assign judges for special work we would have gone on indefinitely breeding discontent with courts among the largest class of litigants. In the small claims branch of the Chicago municipal court three judges

[1] See "Administration of Justice," by William H. Taft, *Green Bag*, Sept., 1908, p. 444.
[2] See Bulletin VIII, A. J. S.

clear a calendar of about 13,000 cases a month, comprising all money claims under $200. In about three-fourths of these cases payment or settlement is effected before return day, so that adjudication is automatic. The deadbeat yields. The work of the conciliation branch of the Cleveland municipal court is so successful that an extension of the idea to other civil branches is certain to be made in time. In the Municipal Court of Minneapolis conciliation procedure has been extended to all causes involving $1,000 or less.

A striking instance of the flexibility of the organized court has more recently been afforded in Chicago. The Credit men's association, representing most of the important commercial concerns of the city and every line of trade, established a bureau to encourage private commercial arbitration. Investigation disclosed the fact that the weak point in arbitration in places where it is most common lies in the inability of lay arbitrators to decide mixed questions of law and fact. It is clear that there is no way of settling questions of fact so economically and correctly as by arbitrators expert in the business involved and free from the complication of court procedure. No jury can cope with the involved problems of modern business with equal prospects of success.

At this stage Chief Justice Olson was able to announce that he would create forthwith a branch court of arbitration, providing one or three judges to act promptly upon questions of law upon a case stated by lay arbitrators. This will result in a more perfect form of arbitration than has ever before been worked out. It cannot be started in a day or a year, like other branch courts, be-

cause it is dependent upon the development of a class of expert arbitrators in whom perfect confidence is reposed, but it must in time fill a great need and become a strong point of coöperation between the court and the commercial world.[1]

The arbitration court is created in accord with a well established policy of shaping procedure so that the courts can accomplish more work with a given number of judges. Many cases of the kind now tried with a jury at great expense to the public will be better tried entirely out of court. Those which involve law as well as fact will be determined by the court with a tenth of the effort now required. The court will have more time to devote to causes which necessitate formal trial with a jury.

Specialization is simply to keep the square peg and the round hole dissociated. It implies overhead unification and the expert assignment of judges. We have no idea as yet to what extent specialization may be economically utilized in city courts. But one thing we know, that the judge sitting in the specialized branch court must be empowered to try all phases of every controversy submitted to him, else specialization will merely bring about increased friction and waste as is now observable in cities which have several independent tribunals.

The criminal field presents a striking example of existing defects. We go on the theory that there are lesser and greater offenses and that for the former judges of inferior personality and experience are good enough. In

[1] Since writing the foregoing the Municipal Court of New York has established both Conciliation and Arbitration branch courts. See Journal of the American Judicature Society, Vol. I, No. 2.

these inferior criminal branches a vast number of offenses classed as legally unimportant, which are of the highest social consequence, are disposed of. If the first screening is done effectually society will have fewer notable offenses to contend with in the higher branches. At present our system is topsy-turvy. An ordinary judge can give fair results in felony trials, but first-class talent is needed to preside over a branch which takes the plea of the first offender.

The preliminary examination with trial in another branch court is probably desirable in cases of felony. The model court would undoubtedly retain this practice. But it can never make progress against the current of social offenses until it can place strong judges in the first instance branches. The city has come to grips with the slum — either city or slum must perish. Society cannot live healthfully until the canker is healed.

The ordinary lawyer is a good citizen and is disposed to see judicial procedure improved. But in his mind a court is a place in which property rights are ascertained in a meticulous manner. He scorns criminal law practice and knows nothing of the socio-criminal branches which are coming into being. He needs to enlarge his horizon and to realize that administration of justice means all of these various things and that they are inseparably related and bound together.

The ordinary lawyer and the ordinary judge shrink from accepting responsibility for the complete administration of justice. They prefer to limit their scheme to the dignified and elegant branches which they know. The remedy for this state of mind is embedded in this model

act, for it makes every judge of the entire metropolitan court in a measure responsible for the working of every branch. The reputation of the single unified court will depend upon its performance in the branch courts which are down on the ground level, some of them located in the slums. Of course not every judge can be expected to participate directly in branches which are far more administrative in character than juridical — which are in fact socio-criminal clinics. But they can uphold the hands of the chief justice who is charged with the direction of the whole big field, and this they must do for their own sake, to protect the reputation of the court upon which they depend for their exalted position in civic life. When the best lawyer and judge is coupled up to the judge presiding over the most disdained tribunal he will become necessarily the most active factor in a movement to kill or cure. For these and similar reasons it is all important to have but one court in a city, however varied its operations.

The opportunity for inventing better means for administering law is boundless.[1] A few years ago Chicago was grumbling about the motor law infractions. Both state and city had enacted profusely and penalties were provided in abundance. The police worked manfully to enforce regulations. Offenders were taken to the police station nearest to the point of arrest and arraigned in a branch police court of the Municipal Court. A surprisingly large number were influential citizens or were esteemed as such by their aldermen. Many of them who

[1] See annual reports, Chicago municipal court; Address on Same, Louisiana Bar Association, Report for 1915. Published also by the American Judicature Society.

really approved of law enforcement took every available means to escape punishment. The few who were "soaked" had a sense of inequality and it rankled.

The ordinary course of events would have been to enact a lot more of penal sections, increase penalties already unrecoverable, and permit reckless driving while pretending to crush it. But Chief Justice Olson had a remedy. He ordered all offenders of the automobile laws to be taken to a special speeders' court, created by executive order, and he assigned to that court a hard-hearted and skeptical judge. Fines at once went up from $5 to $50, and from $50 to $200. In two months $10,000 was collected and vastly more was accomplished than could have been done by added legislation.

Formerly all the forces making for laxity were focussed upon an outlying member of the judicial staff and they were too strong for him. Now all the power for law enforcement, the inertia of a powerful judicial machine, is brought to bear upon the individual offender. The tables are turned. It's a mere matter of method.

We whine about disrespect of law and talk foolishly about its being a national trait. We ought to employ resources at our command to enforce existing law instead of continually clamoring for more law. Somewhere *there must be a man* or all laws break down, and that man must be part of a big, powerful and responsible machine.

And this is how responsibility works out in the organized court: by publicity and by community of interest among the judges. As to publicity: we are behind the rest of the world in not requiring full judicial statistics. It is impossible to arrive at costs, to compare results, or

to frame remedial rules in the present absence of judicial data. We are blundering along in the dark. The annual report of the organized court is a document of inestimable value. It not only permits of expert criticism in lieu of guesswork and dispute, but inevitably sets a mark which the court must not fall short of in the ensuing year. Every single judge has his standard of accomplishment set out in black and white. Some judges could hardly endure the thought, but most of them would find work under such an environment highly stimulating. Nothing is so depressing as the daily and yearly grind with no prospect of being able to demonstrate good service.

It is in the judges' meetings that community of interest demonstrates its power. The judges of a unified court depend in considerable degree upon the popular appreciation of the entire court. They cannot endure to have their court depreciated by the injudicious conduct of certain members. They thus become the first and most zealous inquisitors, anxious to discipline before harm results. Such a court has been called in modern metaphor an "internal combustion court." Before the judges' meeting come the complaints of litigants, of counsel and of judges themselves. There they are threshed out. The erring judge, if one be found to err, is quietly but inexorably put upon the right path. If he is the victim of unfounded complaint he is armed to go forth and face the powers of unrighteousness.

Not the least novel and significant among the features of an organized court is this right of the citizen to enter his complaint. The right does not exist where there is no authoritative head. The individual litigant who is

aggrieved or who has suffered injury which cannot be righted through any course of appeal will only bring himself into contempt if he undertakes to discuss the matter with the typical judge of an unorganized court. He must bridle his feelings even though he believes that more powerful interests have a way to exert influence upon the course of justice.

But the organized court is as democratic as it is powerful. It exists to serve the entire people and the least among them can safely register his protest. The chief justice (and, through him, the judicial council) is kept in touch with public feeling and afforded opportunity to adopt policies of administration calculated to meet the convenience of the greatest number. But if the influence exerted upon the court management is anti-social, which is quite as probable, there is in the organized court an inertia and a responsibility that enable it to pursue the right policy unflinchingly. There is assurance that no single judge is to be punished for being faithful to his trust.

The organized court is obliged to keep abreast of its work unless it can justify delays clearly. Its published reports set a standard of accomplishment. As business increases simpler and more economical methods, derived from growing expertness and having mutual confidence as a foundation, are invented. Without organization the only recourse is additional judges who increase confusion and the opportunity for shirking.

It is now ten years since the first court of this kind was established. The experiment was no timid attempt. It was a bold application to the judicial system of the principles which are universal in modern business life.

Wherever this court has been imitated there has been conspicuous success. In the entire half century during which our cities have come into being there has been no other attempt, out of hundreds, which have yielded the slightest improvement. All our other patchwork has failed even to prevent the growth of evils so that, except for this movement, the situation has become steadily worse.

These conclusions are derived from an intimate study of conditions and a careful comparison of results in cities having made some progress on the road toward unification and in those which are yet to take the first step. The measure of value is found to be precisely commensurate with the extent of jurisdiction conferred.

The movement toward unification of city courts has a close parallel in the commission government movement. Just as the Des Moines plan of government accomplished a great deal, but fell short of ideal results, so the municipal court idea has already done a world of good in the limited field in which it has been tried and points the way to ultimate success. It will reach its fullest accomplishment, supplementing and completing our magnificent program of municipal reform, when it is extended to include all the judicial agencies of a given city. The larger the city and the worse the tangle, the more striking will be the application of these simple principles of unification, specialization, administrative authority and freedom of action. For from all these results responsibility. From these results an environment which unlocks the powers of individual judges so that each strives to make his branch of the work fit to form part of an efficient whole.

XIV

MUNICIPAL DEVELOPMENT IN THE UNITED STATES SINCE 1900

American municipal development up to 1900, when the first Municipal Program was promulgated, had been kaleidoscopic and spasmodic, and therefore well-nigh defied analysis. This was largely due to the search of the charter maker for some philosopher's stone that would take the place of the self-governing instinct; and for some form of governmental perpetual motion machine that would eliminate the necessity for the coöperation and vigilance of the citizenry. Another factor was a correlative one: the desire to avoid what had elsewhere been tried and had failed, without any effort being made to find out the cause of failure. Still another factor was the time-honored devotion to the principle, if principle it may with propriety be called, of checks and balances. This latter in turn was based on the profound distrust of the people which characterized the thinking of the nineteenth century in all governmental matters, and especially in the realm of the city.

As a consequence of these, and subsidiary factors, we find a constant shifting of emphasis, and an equally constant redistribution of powers and functions. Dr. Fairlie in his chapter on " Municipal Development in the United

States" in the first Municipal Program (Macmillan Co., 1900) describes with considerable detail the various changes which took place from generation to generation. "Thus even during the colonial period we may see the beginning of a distinctive American development differentiating the municipalities in the colonies from those in England. Close corporations were the exception; the mayor was already an active and the most important official in the city government; central control over the municipalities existed from the first in the governors' power of appointing mayors, while the way was paved for a more active control through the special legislation of the assemblies in response to the demand of the municipalities for larger powers than those conferred in their charters."

The Revolution wrought a change in the charter-granting power, although "there does not seem to have been much discussion on this change in the charter-granting power; the way had been prepared by the frequent additional grants of authority by colonial assemblies to corporations chartered by executive authority, and the tendency of the new state governments was so strongly in favor of the legislature and against the executive that the new custom was established without question."

During the first forty years after the establishment of the American Republic, the net results, according to Fairlie, were: "(1) The abolition of the close corporations and the definitive establishment of the rule that each American municipality should have a locally elected council; (2) the unmistakable legal supremacy of the state legislatures over the municipal charters and the

powers of the municipalities; (3) the introduction — as yet in a very few places — of the bicameral council system and the veto power of the mayor."

From 1820 to 1850 the development consisted " (1) in the change in the manner of electing mayors, from election by the councils to election by popular vote; and (2) in the limited extension of the bicameral system of council organization. It should also be noted that by the close of this period the property qualifications for the municipal suffrage had in most cases disappeared, and the general tendency of state legislation to enter into great detail in all statutes still further tended to remove all discretionary powers from the local officials, and leave them simply administrative duties to perform. This detailed statutory regulation was, perhaps, to be expected in regard to matters of general state administration, such as poor relief, education, and taxation, which were now often under the control of the municipal authorities. Established in this sphere, it was easy to follow the same rule in legislation for purely local matters in the cities, and especially in the statutes passed without the approval of the municipal authorities in order to insure that the latter would not evade the statutes; while in the case of cities controlled by another political party than that which controlled the state legislature there was a further motive for the most strict and detailed provisions in all the legislation for such cities."

" It is not said that these results had worked themselves out on any large scale before the middle of the

century. It is after, rather than before, the year 1850 that much special legislaton came to be enacted without regard to the local authorities, and hence to be considered as an interference with the local government. But even before 1850 something of this sort had been done, and the steps in the process are worth noting in the general development of municipal government."

During the next thirty years, 1850–1880, the main points to be noted are: (1) The extension of municipal functions in kind and degree; (2) the constant growth of special and partisan legislation for cities, and the first ineffective measures to prevent such legislation; (3) the steady decline of the council; (4) the tendency for the government to disintegrate into independent departments, with no unity or harmony of purpose and action; (5) the development of the mayor's authority, through the limited powers of appointment and removal and veto power.

From 1880 to 1900 there was a continual growth of urban population and municipal activity; and in the words of Dr. Fairlie "by further changes in municipal organization; by some improvement in the subordinate administrative service; and by the increasing movement against the system of partisan and legislative government of municipalities." For the period which he covered and from what I have just quoted he drew these conclusions:

"We have noted the growth of urban population and the devlopment of municipal government in the United

States from the petty colonial borough to the vast metropolitan municipality of to-day. We have seen the evolution from the simple and unorganized council government to the complicated administrative machinery of municipal departments. In the process, the central direction of municipal affairs has passed from the council, and in most American cities authority is distributed and dissipated on no fixed principle between council, mayor, and state legislature, while the influence of national and state political contests in municipal elections, and the operation of the spoils system in municipal office-holding have served to deteriorate still further municipal administration. In recent years, however, we see certain tendencies toward a more scientific distribution of authority, toward the separation of municipal from national and state elections, and toward a more permanent and efficient subordinate service; and while these tendencies have not as yet become widespread, yet it is along the lines already indicated that further advances of a permanent nature may be most rationally anticipated."

This then was the situation, in general, which prevailed when the first Municipal Program was formulated, and which it was designed to modify and mold. The tendencies referred to in the "Conclusions," however, were developing with great rapidity and assuming concrete form.

An important feature of the first Municipal Program was the emphasis placed upon the necessity for constructive reorganization of our city government and especially upon accounting as an instrument to this end.

In the words of Dr. Rowe, in discussing public accounting under the program:

"Whatever may be the influence of the Municipal Program of the National Municipal League on the administration organization and methods of our American cities, the very fact of its formulation marks a turning point in the history of modern reform movements in the United States. The most serious charge to which reform associations have been subjected has been that their efforts were confined to destructive criticism, and that they have failed to furnish a positive basis for political reorganization. Any one who has carefully observed the movement of popular opinion during recent years cannot fail to have been impressed with the danger involved in this growing distrust of the ability of reform movements to meet the practical problems of American political life.

"To make the energy, which is being lavishly expended by such large numbers of devoted citizens, really effective requires the substitution of a positive program for negative criticism. Not only are the shortcomings of our city governments to be dwelt upon, but the positive measures necessary for the improvement of existing conditions must be formulated. To do this requires the most careful consideration of the general principles as well as the technical details of every department of municipal administration." [1]

The recommendations of the Municipal Program under this head were designed to facilitate that enforcement of political responsibility which has been the end and aim

[1] See "A Municipal Program," page 88.

of all recent administrative reforms. "The close relation between public accounting and administrative efficiency is most clearly shown," Dr. Rowe maintained, "in the financiering of private corporations. It is a well-known principle of corporate management that the responsibility of president and directors is largely determined by the annual financial report. That this report should be unequivocal and readily intelligible is one of its primary requisites. Otherwise the stockholders are deprived of all means of enforcing responsibility. Whenever the system of accounting is defective, or when it has been arranged with a view to concealing the policy of the directors, all real responsibility disappears. At times, it is true, stockholders are willing to submit to such methods in order to avoid franchise taxes or other obligations.

"Although the analogy between the management of private and public corporations is often misleading, it is of value in the discussion of questions of financial responsibility. It is quite true that the standards of efficiency in the two cases are quite different. The mere fact of a large treasury balance is no necessary indication of governmental efficiency. A surplus may be due to the failure to repair the deterioration of public works, or to meet pressing obligations. While, therefore, the standards to be applied to the financial reports of private and public corporations are quite different, accuracy and intelligibility are equally necessary in both cases."

Thus it will be seen that the first Municipal Program foreshadowed that movement of the first decade of the

twentieth century which has since been widely known under the caption of "municipal research" and which has had a wide and deserved vogue.

In the year following the promulgation of the Municipal Program, as a logical further step, or as some may choose to regard it, as a by-product, a movement for uniform municipal accounting and reporting was inaugurated, and early in 1901 a committee was appointed, with Dr. Edward M. Hartwell of Boston as chairman, charged with the duty of giving effect to those principles embodied in the Municipal Program which had to do with these subjects.

However, it may be noted, in passing, that it was not the purpose of this Committee to elaborate a system of municipal bookkeeping for adoption by all cities, but rather to devise a practical scheme for summarizing the accounts of any city, whatever its methods of bookkeeping might be, under the form of what was termed a "model comptroller's report." In accordance with this policy and with full recognition of the great diversity which obtains in the financial statistics and reports of American cities, the schedules recommended at the outset by this Committee were avowedly tentative and necessarily elastic in their nature. Moreover, in the words of the Committee, "we have always endeavored to determine their practicability by putting them to the test of actual use. Thus, at Rochester, in 1901, we presented, in connection with our report, the report of the auditor of the City of Newton, Massachusetts, who, with the coöperation of Mr. Chase, of this Committee, in an appendix summarized the receipts and expenditures of

Newton for the year 1900, in accordance with the recommendations of the Committee as embodied in its Schedule D. Similarly, as a part of the report, at Boston, in 1902, we presented in printed form, a 'Statement of the Receipts and Expenditures of the City of Boston for the fiscal year 1900–01, grouped according to the "Uniform System" of the National Municipal League,' which was prepared by the Statistics Department of Boston for the use of the Committee. That year, Mr. Chase, of the Committee, in his capacity of expert accountant and auditor, secured the adoption of some of our schedules by the city auditor of Cambridge, Massachusetts, in his report for the year ending November 30, 1902. Again, the Report of the Comptroller of the City of Baltimore, for the year 1902, was arranged throughout in accordance with our system of grouping receipts and expenditures according to the function subserved by the departments of the city government." As the scheme was in the experimental stage, and the various schedules still undergo testing and trial, it was deemed inadvisable to make final recommendations at that time. Before giving final shape to the schedules, it desired to benefit by the experience and criticism of a still larger number of comptrollers and auditors.

The most notable occurrence in the line of progress toward uniform municipal accounting in the year covered by the report was the passage by the Ohio legislature of an act to secure uniform accounts and financial reports from all cities in the state. The Ohio authorities had had the professional advice of Mr. Chase, a member of the Committee, in perfecting their organization and in shap-

ing schedules, form of report, etc. Before their final adoption the Ohio schedules were submitted to the Committee for consideration. These schedules were in substantial accord with our tentative schedules of 1902.

At the instance of the Merchants' Association of New York, an investigation of the methods employed in keeping the accounts of the City of New York was undertaken with a view to securing simpler and more intelligible reports of the financial operations of that city. The investigation was in charge of Mr. Ford, also a member of the Committee.[1]

At first blush the connection between the municipal accounting and a municipal program may not be obvious; nor the statement that this new movement was destined to have a profound influence on the "more scientific distribution of authority." A careful study of the municipal problem in the light of Dr. Rowe's comments and of the sundry illuminating reports of Dr. Hartwell on behalf of his Committee, which contained in its membership men like Dr. Frederick A. Cleveland, who later became conspicuous as one of the chief directors of the parent bureau of municipal research, will show a close and significant connection between these several tendencies and factors. With the attempt to standardize accounts and reports, came the necessity for a more definitely scientific distribution of functions. The work of the bureaus of municipal research will show a close and significant connection between these several tendencies and factors, and has had far-reaching results. The

[1] See Proceedings of Detroit Meeting of the National Municipal League, pp. 248–249.

development is still in process; but the headway already accomplished justifies the belief that it is only a question of time, and that a relatively short time, when there will be a complete, standardized and functionalized distribution of powers and duties. In this connection reference must be made to the important and influential help rendered by the federal bureau of the Census, which early saw the significance of the National Municipal League's recommendations as to reports, and under the leadership of Dr. LeGrande Powers, adopted the schedules which had been worked out by the League's Committee.

With the development of the bureaus of municipal research, the work of the Census Bureau and of the technical bodies that had taken the subject up, the need for activity on the part of the National Municipal League diminished. Its functions in many directions is necessarily that of a pioneer, and when that work is done it is free to turn to other phases and to other spheres. This is not to be taken as an evidence of a lack or loss of interest, but merely as a recognition of its real functions in promoting movements and tendencies designed to solve American municipal problems.

Municipal research, to use the popular term which has come to cover this new movement, is something more than an organized effort to promote "righteousness via bookkeeping." In an address before the Philadelphia Bureau of Municipal Research, George Burnham, Jr., who has been actively identified with the work of the National Municipal League practically from the beginning, said:

"It is characteristic of Americans that they have al-

ways considered that any citizen was equal to any administrative position under the government if his heart was in the right place and if he was sound in the principles that underlie our political creeds.

"Hence we have taken the doctor, the lawyer, the merchant, or the blacksmith by the scruff of the neck and dumped him into the chair of the legislator, the governor of our state, the mayor of our city, and expected him to make good, whether he knew anything about the job or not. It is not my purpose to criticize . . . but to point out some results in our cities. The plan worked fairly well so long as our city governments were simple affairs, having to do with what were in reality merely outgrown villages. With the rapid growth of our cities, and the increasing complexity of city government due to such activities as electric and steam transportation, water distribution, electric and gas lighting, etc., the plan did not work so well, and the government of our cities began to fall into disrepute. Do not suppose that I think the placing of untrained officials in positions of power and responsibility the only cause of our discredited city governments, but it is certainly a strong contributing factor. In any event, we began to be dissatisfied with our municipal governments, and then began the campaign to 'turn the rascals out' and put in honest men.

"Observe that we still had the old American obsession, and demanded not qualified men so much as honest men. If a man was only honest, he would find a way to perform his job satisfactorily.

"It was soon found, however, that even honest and

well intentioned men did not necessarily make good administrators of our cities. It was then that a small group of men conceived the idea that if a thorough study were made of municipal government, not as a political theory, but as a concrete fact, and the results of such a study were brought before the administrators in being, they would be glad to avail themselves of the chance to improve their methods. This may seem unlikely — pride of office, dislike of outside interference, you may think would prevent it. But put yourself in the place of an elected official for a moment. You suddenly find yourself confronted with a concern for which you are responsible. It has a long tradition of management which may strike you as full of absurdities, but it's there; and standing before you patiently expectant are three or four clerks awaiting your action on some current matter. The immediate burden, in other words, is so heavy that you haven't time or strength to install better methods, and you probably leave the system, after your brief period of authority, as you found it.

"Now, suppose some expert in whom you have confidence steps in and says, 'We have made a careful study of this office, and find the procedure is thus and so, is this correct?' You look over the papers and find that an accurate picture of the going methods of your department has been drawn. Now, says the expert, we believe you can get far better results by doing thus and so, and here are our reasons for thinking so; further, if you find we are right we want you to get the credit for making the changes we propose, as we are not seeking any glory in the matter ourselves. Would you not be inclined to

swallow your pride and accept the assistance, if the changes met with your approval." [1]

All of this has a direct and effective bearing on the question of the establishment of a "more permanent and efficient service," as well as of expert heads of departments, for these latter will not rest content with a haphazard classification, nor with the voluntary assistance of outside experts. The casual and the old-fashioned type of city official, more concerned in the holding of office than with the service he can render, may be willing to gain a passing credit by accepting outside aid; but inevitably the outside expert will be taken inside, and then his influence will be multiplied many times. In passing, I must say in duty to my own convictions, that I do not think the time will come for many years, if ever, when the need for voluntary, coöperating bodies, will cease; but the form of their coöperation will change with the times. Already within the lifetime of the National Municipal League there has been a great change in their functions. If any one had prophesied at the initial meeting that the time would come when a volunteer municipal organization would adopt the following as its program of work and methods, he would have been laughed at as a dreamer, and yet such programs are now much more frequently to be found than those which deal with "don'ts" and "we accuse":

Confer with officials responsible for the municipal department or social conditions to be studied.
Secure promise of coöperation, and instructions that di-

[1] See *National Municipal Review*, Vol. V, pp. 485–7.

rect subordinates to coöperate with the Bureau's representatives.

Ascertain how the powers and duties (and other materials of research) are distributed.

Examine records of work done and of conditions described.

Compare function with result and cost as to each responsible officer, each class of employee, each bureau or division.

Verify reports by usual accounting and research methods and by conference with department and bureau heads.

Coöperate with municipal officials in devising remedies so far as these can be effected through changes of system.

Make no recommendations as to personnel further than to present facts throwing light on the efficiency or inefficiency of employee or officer or to suggest necessary qualifications and where to find eligible candidates.

Prepare formal report to department heads, city executive officers and general public: (a) description, (b) criticism, (c) constructive suggestion.

Support press publicity by illustrations, materials for special articles, facts for city officials, editors and reporters.

Follow up until something definite is done to improve methods and correct evils disclosed.

Supply freely verifiable data to agencies organized for propaganda and for legislative, agitative, or "punitive" work.

Try to secure from other departments of the same municipality and from other municipalities the recognition and adoption of principles and methods proved by experience to promote efficiency.[1]

[1] From "Six Years of Municipal Research for New York City."

A correlative feature of the Municipal Program was the demand for publicity. If the people are to be charged with responsibility they must know the facts. Hence the demand for proper, uniform, intelligible accounts and reports. To quote Dr. Rowe again: "The numerous instances in which public opinion has been unable to reach any definite conclusions — owing to the lack of systematic presentation of financial data — would seem a sufficient reason for these provisions in the Program. One of the most striking instances is the leasing of the Philadelphia Gas Works. The conflicting statements of opposing interests were supported by data taken from the same reports. The classification of receipts and expenditures was so confusing that almost any proposition could be read into it. We cannot expect the citizen to subject every public financial statement to critical analysis. He is at the mercy of conflicting interpretations unless the official information furnished him is so clear and unequivocal as to leave no room for doubt." [1]

The old Philadelphia Gas Works affords a striking example for our purpose, because they illustrate all that was evil and detrimental in the old conditions: inadequate, indefinite, non-comparable accounts, a complete absence of publicity, accountability and responsibility. The first great step forward in Philadelphia was accomplished when the old commission was abolished, and the works placed under the control of a responsible director of public works. Another great step forward was taken when the old Public Buildings Commission was abolished and the City Hall placed under the control of an appropriate

[1] "A Municipal Program," p. 93.

bureau of the city government. Gradually these irresponsible, secretive, autocratic commissions are being displaced and the work placed in the hands of officials more directly responsible to the people, and who in time will become experts.

A striking illustration of the old and the new is afforded by contrasting the secretive methods of the Public Buildings Commission, yielding information and that most reluctantly only when forced by the strong arm of the law, and the new publicity methods of Dayton, by means of which the whole public is taken into the confidence of the commission and its city manager. Whole pages of the Dayton papers are now taken up with *advertisements* of what is being done for the city and the people, and how it is being done. Surely we are making progress!

Another illustration is to be found in the office of the Commissioner of Accounts in New York, an official investigating commission by the use of which the mayor obtains independent information as to the records and works of all departments of the city and county governments. During Mayor Gaynor's time the commissioner adopted as his motto Franklin's aphorism: "The eye of the master will do more work than both his hands." Some idea of the functions of this significant office may be gathered from a little leaflet issued several years ago entitled "The Mayor's Eye":

"The mayor of a city like Greater New York must keep his eye on thirty-four departments of the city government, employing 60,000 men and women, and spending $250,000,000 each year. As he cannot look into every

detail himself, he must have records to show what these employees do, and agents who can read them in his stead and report to him what they learn.

"At present the Mayor of New York has an organization of about ninety skilled persons engaged in this work. Day in and day out this organization furnishes the mayor much of the information upon which he bases executive action. It is, in fact, 'The Mayor's Eye.' Officially, it is known as the office of Commissioner of Accounts."

Under the provisions of the Charter, Sections 119 and 195, it is empowered and required to make a detailed examination of all accounts for all moneys received into and paid out of the city treasury, in all departments, and for all purposes, and to report its findings to the mayor and aldermen.

The Charter further provides that the commissioner shall make such other examinations as the mayor may direct, or as the commissioner may deem for the best interests of the city, but he must always report his findings to the mayor and aldermen.

To enable them to ascertain the facts the commissioner is authorized to subpœna and compel the attendance of witnesses, to administer oaths, to examine such persons as they may deem necessary, and to obtain access to any records or papers having to do with the city government. The work necessarily involves the employment of accountants, engineers, lawyers, detectives, and other specialists.

It will be readily seen that with these powers and

duties, the commissioner is a most effective instrument for aiding the Mayor in securing good government.

This work, however, is by no means all of the activities of this Commission. In fact, there are a thousand and one minor things requiring study and investigation, which result in changes of policy and instructions, rather than in uncovering carelessness in the use of money or misappropriation of funds:

"Complaints, rumors, suspicions, criticisms by the press, disputes over contracts, public work in progress, delays, violations of specifications, comparison of equipment with that of other cities, chemical analyses of coal, reports on tests of materials, and so on — all these things come under the jurisdiction of this Commission."

This office has been more than an eye to the mayor; it has been the people's eye as well, giving them an insight into the operation of their affairs that has been of the greatest help in reaching and forming conclusions.

At the time of the promulgation of the first Municipal Program, the most that was then hoped for was the establishment of "a more permanent and efficient subordinate service," although there was a clear recognition of the fact that official business should be conducted in the main by "a class of public servants who by reason of experience and special training are peculiarly fitted for their official duties," meaning of course that all officials that had to do with the execution of policies should be selected without reference to politics and because of their fitness and expertness.

By 1912 interest had so far developed that the joint committee of the National Municipal League and the National Civil Service Reform League on the selection and retention of experts in municipal office called attention to a striking distinction between the administration of cities in enlightened European countries and that of the cities in the United States. Regardless of the differences in the form and organization of municipal government in European countries,

"There is always at the head of each of what may be termed the operating services of city government in European cities an expert who has won his position through his expert qualifications and experience and who holds that position during continued efficiency and good conduct. In every case he has the reasonable certainty of an honorable and permanent career in the line of his chosen calling. In the United States this essential feature of successful city government is almost wholly lacking. Corresponding positions at the head of the operating services of city government here are filled by a kaleidoscopic procession of casuals, whose appointment and tenure are usually influenced by considerations of partisan politics and no permanency of tenure or hope of a career is probable, if even possible. The application of the merit system to the operating departments thus far has been, with here and there an exception, confined to subordinate positions only. This has created the anomaly that subordinates have been withdrawn from the field of partisan politics, while their superior and directing officials are still subject to its malign influence.

The result upon the efficiency of the operating services of city government has been exactly what might have been expected. The absolute necessity of placing upon a permanent and independent basis the higher administrative officials who carry out, but do not create, the policies of a city government has been repeatedly emphasized by eminent earnest workers for the betterment of city government in the United States. Among them that eminent student of government here and abroad, A. Lawrence Lowell, now president of Harvard University, pointed out the need very clearly in his brief and admirable paper before the National Municipal League at its Pittsburgh meeting in 1908."

Recognition of the evil involved becoming more and more general, there has come a steadily increasing demand for some practical method of removing it. This joint committee therefore at the Los Angeles meeting of the National Municipal League (1912) submitted the following suggestions:

The operating departments of a city government should be manned by a force selected and retained solely because of competence to do the work of their positions. At the head of each such department should be an expert in the work of the department who holds his position without reference to the exigencies of partisan politics.

American political experience has proved that on the whole the most certain way of securing such a force is through what have come to be known as civil service reform methods, namely, through competitive examinations of applicants for appointment or promotion. Since 1883, when the practical application of these methods began, it

has been found that such examinations need not and often should not be confined to book knowledge or to written questions and answers, and that, provided the examination be fairly conducted by competent examiners, other forms of examinations have been successful to a marked degree in filling positions requiring not only the highest expert knowledge but the highest expert administrative ability.

How shall the system which produces such examiners and such results from examinations be established and protected? The answer is through a board or commission, whose one duty it is to maintain and perfect such a system and whose members shall hold their positions independent of arbitrary removal. Whatever the particular form of municipal government may be, the members of its civil service commission should not be subject to arbitrary removal and should not, in fact, ever be removed because of any difference between the partisan political views of the members of such commission and the power that appoints them.

There should be at least three members of such a commission and the terms should be at least three years, one going out of office each year. In Illinois the civil service commissioners are considered as experts and are chosen as such. Such a commission having the authority to prescribe and enforce the conditions of appointment and promotion, but with no power itself to appoint or promote will inaugurate and, with experience, will perfect a system that will keep every position from the highest to the lowest in the operating services of a city government free from any partisan political influence.

Since the duties of such a commission are purely administrative and are not in any slightest sense of a partisan political nature, and it is important that the standard of administration in each city should be kept at the highest, we favor the administrative supervision of the city

commissions by a central state board. The supervision should be administrative solely and, properly conducted, will tend to keep the level of local administration high. A local commission conscious of constant criticism from a central state board entitled to investigate and report and under proper restrictions to reprimand and punish will feel a stricter and higher responsibility to the public for the performance of its duties.

In reaching these conclusions, the committee constantly kept in mind that those officials who formulate and establish policies must be in close touch with the people, either by direct election or through appointment and removal without restraint by those who are elected by the people. On the other hand, operating officials carrying out the policies so determined should hold office during continued efficiency and good conduct, and should be experts of education, training, experience and executive ability, and selected and promoted under civil service rules of a kind to determine these qualifications.

To the objection that an incoming administration should have the power to appoint its own experts in sympathy with its proposed policies, it may be answered that experience both in public and in private work has shown that an executive does not need to change experts in order to initiate new policies. In railroading, for example, a change of administration is followed by few, if any, changes among the civil engineers and superintendents of divisions. When Mr. Harriman took charge of the Union and Southern Pacific railroads, and entirely changed their policies, he kept all the former experts, even the chief legal adviser of the road; and Mr. Hill, in his

reorganization of the Northern Pacific and its branches, made only one change in its large personnel.

The Committee, which was composed of Robert Catherwood, Chicago; Richard Henry Dana, Boston; Horace E. Deming, New York; William Dudley Foulke, Richmond, Indiana; Elliott E. Goodwin, New York; Stiles P. Jones, Minneapolis; Clinton Rogers Woodruff, Philadelphia, chairman, proceeded to point out:

"To the argument that experts are likely to become bureaucratic and out of touch with the people, experience has demonstrated that they are very much alive to the needs of the people, at home and abroad, and that they often suggest improvements of which the people themselves have not thought, and which have never been made an issue. As a general proposition, neither the people nor the politicians have initiated the modern municipal improvements, but rather the experts, such as physicians, sanitary and civil engineers, architects, landscape architects, bacteriologists, philanthropists, and educators, backed up by civic leagues, boards of trade, and similar public bodies.

"It is not claimed that an ordinary academic civil service examination is a suitable method to select experts of mature experience and executive ability. The present methods employed by competent civil service commissions for such positions, however, are not such. There are two general methods employed: one selecting for the lower expert positions through very thorough technical examinations, and then promoting to the chief positions as experience becomes mature and executive ability is

exhibited; the other is that of directly filling the higher positions by examinations consisting of systematic and thorough inquiry into the education and training of the candidates, their achievements, experience, success in handling men, and ability in executing large affairs, and carried on by examiners who themselves are specialists in the subjects under consideration. For example, for selecting an architect, leading architects are the examiners; for engineers, engineers.

"High-grade experts of mature experience do not like to exchange steady private employment for municipal services as conducted in the United States to-day, with short or uncertain terms during which they are subject to dictation from politicians. Where, however, positions are made practically secure, and where successors can only be chosen by a method from which favoritism is eliminated, and sufficient powers are granted them, experts do apply. This is not only true on the continent of Europe, but has proved true in Chicago, where the city engineer, the engineer in charge of bridges, the city auditor, the chief street engineer, the building inspector in chief and the chief librarian (with salaries from $3,000 to $8,000 a year) have been appointed under civil service rules. This system has also been successfully used in the appointment of the state librarian of New York State, assistants to the attorney general, and several other such officials, and, in the federal service, in the appointment of the heads of many bureaus, experts with scientific knowledge and executive ability. R. A. Widdowson, the secretary of the Chicago civil service commission, in a letter dated February 14, 1912, said: 'The higher grade

examinations in the Chicago civil service, which are usually open to all qualified residents of the United States, attract men of the highest caliber where the salaries are on a commercial basis.' The same in substance is reported by the civil service commissions of Kansas City, New York City, New York State, and the United States.

"When such a system as herein recommended has been in operation for a number of years there will doubtless grow up in this country, as there has in England and in Europe, a large body of municipal experts in the various branches of municipal activity who begin their careers in cities of moderate size, or as assistants in large cities, and by promotion from one city to another or within the same city reach the highest positions.

"In the United States we have as an illustration of expert accomplishment the river and harbor work. The fact that out of the $627,000,000 actually spent for that work between 1789 and 1911 so little has gone for corrupt purposes is due to the work having been done under the detailed administration of United States army engineers, who secure their positions through strict competition at West Point and who hold their positions for life during good behavior, and who are only under about the same control as is proposed here for municipal experts. These United States army engineers have nothing to do with the initiaton of the work (except in the way of advice) or of the appropriation of the funds, and all their expenditures are carefully scrutinized by auditors and comptrollers who disallow any item not strictly within the appropriation and law.

"If by this system we should in America succeed in taking municipal contracts out of politics and putting the control of subordinate employees under persons not looking to the next election, we shall accomplish for the welfare, political morality, and reputation of our American cities a lasting good." [1]

A still further step in this direction has been taken in the organization of the "Society for the Promotion of Training for Public Service." Its program embodies: Improvement of public administration; making public service a profession; practical training for public service; harnessing civil service reform to an educational program; widest community service of our educational institutions; more agencies of accurate public information; more effective civic organizations; extension of the part-time principle in education; removing local residence requirement for public service; welfare work for public employees. Certainly an ambitious program; significant of the development of public opinion and public demands on this phase of municipal government. Another step has been taken, that is the granting of academic credit for work done in city departments and bureaus by students, and the linking up of educational institutions with city administrations, as, for instance, Columbia University and the University of the City of New York in Greater

[1] The general principles of "Expert City Government" were dealt with at length in William Dudley Foulke's presidential address of that year, which is reprinted in full in the *National Municipal Review*, Vol. I, page 549. Another article, "Civil Service Reform at Los Angeles," see *National Municipal Review*, Vol. I, page 639, further summarizes the conclusions reached and the papers read at the meeting held in that city.

New York; the University of Pennsylvania in Philadelphia; the University of Cincinnati in that city.[1] And still another is outlined in detail in a volume on "Expert City Government" edited by Major E. A. Fitzpatrick for the National Municipal League Series.

The local residence requirement for public office has long been one of the bulwarks of the existing régime. It harmonizes with the spirit of provincialism and not only makes for the *status quo,* but it helps in the maintenance of a strong political organization. Dr. Clyde L. King in an article under this title in *The Public Servant* for February, 1916, thus states the case:

"There is needed an inspector of gas in a large city at a salary of $5,000 per year. The tide of provincialism in this particular city runs strong. 'Aliens' are not wanted. Therefore, by law or by decree of the civil service commission, applicants for the position are limited to those who are residents of the city.

"The position requires integrity and willingness to put the public weal first. There are ten applicants, of whom five pass the examination. Of these five, two have been sent in by the gas company. One is a ward worker who has crammed up for the examination, and barely passes it, but passes high on 'personality and tact,' which counted 4 out of the 10 points. A fourth is a clerk in the present bureau, a man who passed low on the 'personality and tact' test, but who was sufficiently immersed in office procedure to pass his other tests with high per-

[1] See article on Municipal Universities, by Dean John L. Patterson, *National Municipal Review,* Vol. V, p. 553.

centages. A fifth is a graduate of an engineering school in a nearby university, endowments to which are being expectantly awaited. This particular graduate the faculty had not thought sufficiently capable to warrant a recommendation for private employment. Moreover, his family connections and his aspirations are such as to make him very amenable to 'social pressure' from the gas office.

"One of the five must be chosen. What is the best choice? Is it not the hard worker?

"A similar examination is given in another city for an identical position. The examination this time is open to all without residence restrictions. Again there are five successful applicants. One is a local politician who in his oral examination assures the examiners that he can do any 'organizing' work among the voters the city administration may wish him to do. His technical qualifications are just sufficient to let him pass. A second is a resident of the city, and once an instructor in chemistry in a nearby university. His technical qualifications are high. He sends word to the appointing authority that councils are 'with him.' The character of the councils is such as to make it sure that this means inimical pressure from the gas company. A third is a highly qualified non-resident expert from a nearby gas company, who says in his written examination that utility questions are to be solved solely by conference with the president of the home gas company. A fourth is a resident graduate from a high-grade engineering school. The tests assure him to be capable and fearless. A fifth has served the public most acceptably in a similar position in a larger city at a salary

of $3,500. He has excellent technical proparation, knows how to deal with the public, and his ideals as a public servant have been well tested.

"Now which of the five should be appointed? Is it not the experienced expert?

"But, you say, these are extreme cases. Quite to the contrary, they are taken almost word for word from official records and are typical of what is going on day after day in American municipalities.

"The number of qualified men free to take such a position are sufficiently limited in the United States. It stands to reason that the possibilities of a good choice are all the fewer when applicants are limited to their home towns. The residence limitation assures mediocrity in public office; the removal of the residence limitation gives opportunity for the prepared expert who wishes to be a public servant."

These contrasts bring out the situation clearly and show how students feel on the question. The fact that the newer charters are omitting the local residence clause shows how charter framers are thinking, and when administrators like Morris Llewellyn Cooke, Director of Public Works under Mayor Blankenburg, freely bring in outside experts, we see how administrators are tending. Another significant straw is to be seen in the retention of some of these outside experts under his successor, although the appointment of "aliens" had been an issue in the political campaign.

Some further idea of the tendency may be gathered from the fact that the following cities, among others,

chose non-residents to serve as city managers: Dayton and Springfield, Ohio; Niagara Falls, New York; St. Augustine and Lakeland, Florida; Jackson, Michigan; San José, California; La Grande, Oregon; Webster City, Iowa; Norwood, Massachusetts; Norfolk, Virginia; Goldsboro, North Carolina; Bethlehem, Pennsylvania.

Another phase of this tendency calling for notice in this connection is the payment of adequate salaries. While we have by no means reached the foreign standards in the compensation of public service, a good start has been made in several places, and the commission form has been a very considerable lever.

So far reference has been made only to the development of the administrative side of the city government. We have seen that the development has been along sound lines, and in the direction of efficiency. Increasing emphasis is being placed upon the coördination and smooth working of departmental service; modern scientific methods are being followed in the development of each municipal function and of each part of the machinery of service; and the distribution of the funds voted for the support of each is steadily being based upon their actual relative needs and importance. The development along other lines has been equally marked and equally encouraging. The tendency has been away from complexity, toward simplicity; from irresponsibility to responsibility; from diffusion to concentration; from irresponsiveness to responsiveness. In his Yale lectures, George McAneny said: "The old-plan city charters should give way as rapidly as may be to charters that do treat cities as business and social institutions; that prevent as far as pos-

sible the intrusion of national politics in city affairs; that reduce to a minimum the number of city officers to be elected by direct vote of the people; that centralize executive responsibility; and that provide the simplest and, at the same time, the most efficient sort of working machinery for the conduct of the city's running affairs."

And this has been the undoubted tendency of the past score of years. Since the first Municipal Program the commission form of government and its modifications have embodied these ideas. The short ballot principle has gained great vogue since the Program of 1900 was published, and now we have a Short Ballot Organization which is spreading the gospel with zeal and efficiency. The idea is not new, although the happy phrase, "Short Ballot" is; but the propaganda has only taken concrete form within the past decade. Its greatest strides have been made in the field of municipal government and for some time to come are likely to be mainly confined to that field. The Short Ballot is a move in the direction of a more actual popular control on the principle that a man may manage his business more effectively through not trying to assume too large a share of the detail. In this connection it may be observed that it seems reasonable to suppose that the initiative and referendum on any extensive scale will not in the long run prove generally feasible. Representatives and executors, few in number, with large powers, and with rigid and direct responsibility to the people, may be expected to execute so satisfactorily the popular will that direct interference will be as infrequent in the world of politics as it is under similar circumstances in the world of business.

Some idea of the complexity and diffusion in city charters may be gathered from the diagnosis of municipal ills in Los Angeles prepared by Director Burks of the Efficiency Bureau of that city. He prepared a chart showing an outline of the city government together with an analysis which contained a number of interesting facts from which may be noted for the purposes of illustration:

Of the 72 members of the 20 boards and commissions, only 32 members had been appointed by the then mayor; 40 owing their appointment to preceding mayors;

The mayor is ex-officio member of two commissions (fire and police), but aside from this is not in a position to exercise strong authority over the administrative branches of the city government;

There is no systematic and consistent plan of government for the city;

There is confusion between the policy-making authority on the one hand and responsibility for management on the other.

The chart made it clear that there is no chief executive with definitely fixed, inclusive authority and responsibility; that there is a wide dispersion, separation, and duplication of powers instead of a classification and coordination of functions and personnel; that there is a multiplicity of bodies charged with legislative or policy-determining authority, instead of a single body with control over administrative officers; and that the scheme of organization is in many respects illogical and inconsistent.

Such an organization is without parallel among well

conducted, successful private enterprises, although it may be assumed that efficiency in the management of public business must be obtained by the same methods that have been found necessary in private management. The organization pictured in the chart is the logical outcome of the theory that public officials are not to be trusted and that they must be hedged about by checks and limitations that will prevent them from going too far astray. The intelligent, public-spirited, competent official is therefore compelled to work under the handicap of conditions that have been imposed by distrust and suspicion.

Contrast this arrangement with the simple, direct commission government form; or the still simpler and more direct commission manager form of government and see what has been and is being accomplished.

Another contrast is the one afforded by a comparison of the length of the old plan charters, and the new. The former went on the principle that nothing could safely be trusted to the people or their representatives. That everything had to be put down in black and white and given the binding effect of statute law. As a consequence, city charters have assumed forbidding lengths. The federal constitution and its seventeen amendments, including chapter headings and numerals, contains 5919 words. In the language of the editor of *The St. Louis Dispatch:* "Statesmen in the early days were sparing in the use of words. They aimed to say it and quit, and they did not aim to say everything; just the essential things. They knew better than to try to legislate on details for generations yet unborn. They trusted future governments to do that." So in 4476 words, the amend-

ments added 1443, making 5919 in all, the framers of the Constitution drew a charter for a great nation, declaring and defining its powers, limitations and duties, the powers, limitations and duties of the constituent states, the rights and duties of individual citizens, and set up the three co-ordinate branches of the government, with their subdivisions — all in 4476 words. Their successors during more than 125 years used 1443 additional words, keeping the nation's charter up to date.

The Constitution is written in simple language. Any person of average intelligence and possessing a common school education can readily understand every word of it, every statement in it. It is the world's model, among state and national charters, for its simplicity, its completeness, its efficacy, its brevity.

St. Louis' city charter is seven or eight times as long. Was it seven or eight times as hard to say, the *Dispatch* asks, "what needed to be said in the city charter as it was to say what needed to be said in the national charter? Or is the city seven or eight times as important as the nation? Or were the makers of the nation's charter seven or eight times as skillful as the city charter makers in stating essential things briefly, and omitting the non-essential? Or did the city charter makers say seven or eight times as many things as needed to be said in a city charter?

"Even the admirable charter voted on in 1910 contained more than 30,000 words — was over 26 newspaper columns in length. Its essential declarations could have been made in less than two columns."

And St. Louis is not by any means an extreme example. Prior to the adoption of its new charter, Boston's so-called charter was declared to consist of upwards of 700 separate acts of the legislature. Compare that situation, or the St. Louis charter, and these not the greatest offenders in the matter of length or complexity, with the Des Moines charter or with any of the commission type, and one can quickly gain an idea of the progress we are making in improving the popular machinery of government so that the people can really understand and run the policy-determining end of the government which is the only one with which they should be charged responsibility. If they are given actual control of that branch, then the administrative end will in time fall in line and become responsive both to the needs and aspirations of the people.

Electoral reforms have scarcely kept pace with the improvement in governmental machinery, but they are not hopeless laggards. This improvement continues steadily and in the direction of eliminating nomination monopolies, and of giving the voters a more direct actual say in the determination of their policies and the settlement of their affairs, and of helping to drive national party lines and partisanship out of municipal affairs. With only a few exceptions, every commission government represents simplified non-partisan elections. They also represent the abolition of ward politics with all their petty jealousies and rivalries, with all their dangerous log-rolling. While there is a serious appreciation of the need of keeping representatives close to the people and preserving wieldy districts, that political

organizations may not be given an undue weight and influence, there has been an equally serious appreciation of the evils of the old-fashioned arbitrary ward. In the communities now under the commission government, the ward lines have gone so far as local elections are concerned, and in those cities where elections at large prevail; and in some cities, notably in Seattle, the ward lines have been legally abolished.

Municipal progress has not been confined to the improvement of governmental machinery. In two other still more important directions it has been making steady headway. I refer to the fundamental question of self-government and to the highly essential need of an adequate conception of municipal government as a factor in promoting human welfare.

Municipal home rule, as we have come to call the demand for self-government of our cities, was an academic question in 1900. To-day it is a practical political question in a majority of the states. In 1904 the people of Lynn had to go to the legislature to secure permission to change their inauguration exercises from evening to morning. In many another city charter could be found restrictions equally as unreasonable, limiting the right of the people of the city to determine purely local matters to suit themselves. Massachusetts cities are still in a large measure dependent upon their legislature; but even in that state, cities are now given an opportunity at least to write their charters, within certain narrow lines; and a series of optional charters has been passed by the legislature. These may be but slight concessions, but they are the beginning of the end, which is not far off

in many other places. In 1914 I said in my annual review:

"Municipal home rule has been making great gains within the past few years. In the first place, by inserting in the state constitutions provisions giving to the cities the right to determine their own destinies, setting them free to do for their 'citizen stockholders' that which they have come to realize needs to be done, and which they cannot do so long as they are 'held under suzerainty by the rural population, expressing its will through the old-fashioned sort of legislatures.' In this class are the cities of Colorado, where the National Municipal League's constitutional amendment has been adopted in its entirety, California, Oregon, Washington, Oklahoma, Arizona, Idaho, Texas, Nebraska, Minnesota, Michigan, Ohio. The movement has made headway in those states which have given the cities the opportunity to adopt certain forms of government, as in Kansas, where the cities, can, if they wish, come under the commission form if their electors so vote. Ohio, Illinois, Wisconsin, Iowa, North Carolina, New Mexico, are in this class. There is still another form of municipal home rule, which may be said to be home rule by sufferance, in those states where the state legislatures defer to the wishes of the representatives therein from the community affected."[1]

"These three movements: Non-partisanship, the direct election of federal senators and municipal home rule all represent municipal advance of the most effective kind, in

[1] See *National Municipal Review*, Vol. III, page 5.

that they place municipal affairs clearly on their own bases, freed from outside and alien influences, and give to our cities opportunity fully to develop their resources along democratic lines."

Municipal home rule is daily gaining a firmer hold on public opinion, and in the course of the coming generation is destined to become a settled policy.

At the same time there has been an equally marked tendency toward a state supervision of municipal affairs, so that uniformity may be secured, and a wise, general policy worked out. To put the situation in another way: state legislative government of cities is gradually being replaced by a state administrative supervision and control, as advocated in the first Municipal Program.

It is in our conception of municipal government that perhaps the greatest change is to be noted. As Mayo Fesler, when a member of the Cleveland charter commission, who was also a member of the League's second Committee on Municipal Program, said: "Recognition must be given to the fact that it is the duty of the municipality to care for the welfare of its citizens fully as much as for the property and material interests of its citizens."

In a recent address Edward A. Ross defined the functions of a city in this manner:

"The starting of every young person on his or her adult life with an education and trade is a function of the community. This is not socialism, for the question in socialism is, 'Should any portion of the product go to

people by virtue of their property claims or should service only participate?'

"In the city which I have in mind there will be rich and poor, there will still be plenty of competition, of success and of failure, and the individual will still have to hustle for the rent, for clothing, and for food, but health, education, culture and recreation — these will be supplied by the city."

The inspection of food and housing provision for preserving the health of its citizens, and the providing of public entertainment and recreation, as well as education, are legitimate functions of the modern city, in the view of Professor Ross. He favors central bureaus to provide work for the unemployed, industrial education to replace the apprentice system now dying out, an increase in the activities of public libraries, the suppression of vice, and the furnishing of small parks in the built-up sections of cities. He also favors municipal milk depots as a legitimate sphere of city government, and instanced Rochester, which so decreased its infant mortality by this means as to mean an annual saving of 400 babies at an expense of $2,200 a year, or $5.50 a baby. There are numerous other functions which a city is called upon to perform, and the demand seems to be daily increasing; but they are all urged that they are needed because it is the real business of the city to promote and protect the health, education, recreation, safety, convenience and prosperity of its citizens. In short, it is the function of the city to serve, as well as to govern.

In another direction the conception of the city has

developed along encouraging lines — and that is in the matter of city planning, which was regarded as a far cry in 1900, and is now a subject of vigorous discussion in sundry communities, and of settled policy in others. Nay, certain phases, like those of districting and zoning, then regarded as interesting dreams, but still dreams, are not only coming to be crystallized into municipal law, but more important still, to be upheld by the Supreme Court of the United States as a constitutional exercise of municipal authority!

The conception of the personal obligation of citizenship and that of official duty are changing for the better. As Professor Zueblin pointed out before the Association of New York State Mayors and other officials:

"A meeting of the mayors and other public officials of the cities of a great commonwealth like New York is the best possible indication that times have changed. A traditional American attitude, which has unfortunately prevailed in most cities over a century, is that of supposing that a municipal position is a thankless job in which a minimum service is exacted, and such peculiar perquisites as the official may secure from his office are tolerated. Until a decade ago municipal officials were chiefly remembered by having their names conspicuously embellishing a large tablet placed upon any building or public structure perpetrated during their incumbency. The men who gather at such conferences as this will be remembered for their services to the communities; at least their services will be remembered, what matter if they are personally forgotten! The first obligation of every public official is

of course to do the work assigned to him in the organization of the city, and that is a large contract, in view of our traditions. The character of public life, however, advances so rapidly that we now expect more; and if all our public officials did their work to the complete satisfaction of their consciences there would still be a large field of possible usefulness over which, under ideal conditions, their activities might extend."

Similar associations or leagues have been organized in thirty-three other states, surely an encouraging showing, when one recalls their objects and purposes, which are well set forth in the outline of the bureau maintained by the New York Association:

1. To gather information and statistics relative to municipal problems and improvements and to distribute them among the officials of the cities of the state.

2. To keep all municipalities informed about bills introduced into the legislature and newly enacted laws affecting the cities.

3. To furnish any city upon request all available information or statistics relative to any municipal activity indicated.

4. To keep municipal officials of the state in touch with each other by distributing among them any new plans devised by an official of any department.

5. In addition, the bureau should also keep officials informed as to the progress of all municipal innovations thus reported to them, so that they might know of their success or failure.

6. To distribute such reports and other literature rela-

tive to municipal government and activities as will aid municipal officials.

Along with this satisfactory trend is to be noted the fact that public opinion gains force and effectiveness through organization rather than through disconnected action. When sufficiently aroused, citizen interest must take definite form in the organization of a citizen agency. This agency, as Mr. Burnham declared in his speech already quoted from, finds that before it may serve as a medium of communication between the citizen and his government, and before it can secure the results desired, it must have fact bases. Investigation is required to afford sound recommendations, and as a result the extensive progress being made in governmental affairs must be attributed largely to these civic agencies. It is necessary to view the work of these agencies, as well as the government itself, to find what steps have been taken to place government upon a higher plane. Their object is always a better government. They are variously known as bureaus of municipal research, institutes for public service, institutes for government research, civic or taxpayers' associations, municipal leagues, etc. The number of these agencies is increasing and their influence for good government was never greater than to-day. Logically, they give no thought to whether the administration is a party one, but instead demand that it be measured in terms of effectiveness and whether the largest possibilities are being realized through economical and efficient expenditure of public funds. Official and citizen coöperation, as it has come to be called, is really the product of the present generation. When the National Municipal

League was formed in 1894, it was an unheard of policy. Now it is a factor everywhere to be reckoned with in measuring the development of American municipal government. It is arousing the people, stimulating them and formulating their opinion in such public questions as have been considered in these chapters. Indeed the progress which has herein been recorded would have been impossible without it.

THE MODEL CITY CHARTER

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REPORT OF COMMITTEE ON MUNICIPAL PROGRAM

The Committee on Municipal Program was appointed in 1913 to consider the original "Municipal Program" adopted in 1900 and if desirable to draft a new model charter and home rule constitutional amendments embodying the result of subsequent study and developments. This committee presented a partial report to the meeting of the League in Baltimore, in November, 1914, in the form of sections dealing with the council, the city manager and the civil service board. The committee held two day sessions in New York, April 8 and 9, 1915, at which time these sections were carefully revised and sections dealing with the initiative, referendum, recall and other electoral provisions were considered and added, and a partial draft of the constitutional provisions, which had been presented at the Baltimore meeting was completed. Another meeting of the committee was held in New York, September 14, 1915, at which further revisions were made, and the financial provisions added as well as the two appendices treating of proportional representation and franchise provisions, all of which were included in the tentative draft. The Program was again submitted to the League at its annual meeting in Dayton on November 19, 1915, and the sections were approved by the members there present. The document was referred back to the Committee on Municipal Program for

further amendments, and these amendments as adopted at a meeting of the committee in Philadelphia, December 27 and 28, 1915, are also contained in the following Program.

The Committee on Municipal Program consists of:

William Dudley Foulke, *Chairman,* Richmond, Ind.
M. N. Baker, of the *Engineering News,*
Richard S. Childs, New York City,
John A. Fairlie, University of Illinois.
Mayo Fesler, Civic League, Cleveland,
A. R. Hatton, Western Reserve University, Cleveland,
Herman G. James, University of Texas,
A. Lawrence Lowell, Harvard University,
William Bennett Munro, Harvard University,
Robert Treat Paine, Boston,
Delos F. Wilcox, New York City,
Clinton Rogers Woodruff, Philadelphia.

MUNICIPAL HOME RULE CONSTITUTIONAL PROVISIONS

(To be adopted and incorporated in the state constitution)

Section 1. *Incorporation and Organization.* Provision shall be made by a general law for the incorporation of cities and villages; and by a general law for the organization and government of cities and villages which do not adopt laws or charters in accordance with the provisions of sections 2 and 3 of this article.

Sec. 2. *Optional Laws.* Laws may be enacted affecting the organization and government of cities and villages, which shall become effective in any city or village only when submitted to the electors thereof and approved by a majority of those voting thereon.

SEC. 3. *City Charters.* Any city may frame and adopt a charter for its own government in the following manner: The legislative authority of the city may by a two-thirds vote of its members, and, upon the petition of ten per cent of the qualified electors, shall forthwith provide by ordinance for the submission to the electors of the question: "Shall a commission be chosen to frame a charter?" The ordinance shall require that the question be submitted to the electors at the next regular municipal election, if one shall occur not less than sixty nor more than one hundred and twenty days after its passage, otherwise, at a special election to be called and held within the time aforesaid; the ballot containing such question shall also contain the names of candidates for members of the proposed commission, but without party designation.

Such candidates shall be nominated by petition which shall be signed by not less than two per cent of the qualified electors, and be filed with the election authorities at least thirty days before such election; provided, that in no case shall the signatures of more than one thousand (1000) qualified electors be required for the nomination of any candidate. If a majority of the electors voting on the question of choosing a commission shall vote in the affirmative, then the fifteen candidates receiving the highest number of votes (or if the legislative authority of the state provides by general law for the election of such commissioners by means of a preferential ballot or proportional representation or both, then the fifteen chosen in the manner required by such general

law) shall constitute the charter commission and shall proceed to frame a charter.

Any charter so framed shall be submitted to the qualified electors of the city at an election to be held at a time to be determined by the charter commission, which shall be at least thirty days subsequent to its completion and distribution among the electors and not more than one year from the date of the election of the charter commission. Alternative provisions may also be submitted to be voted upon separately. The commission shall make provision for the distribution of copies of the proposed charter and of any alternative provisions to the qualified electors of the city not less than thirty days before the election at which it is voted upon. Such proposed charter and such alternative provisions as are approved by a majority of the electors voting thereon shall become the organic law of such city at such time as may be fixed therein, and shall supersede any existing charter and all laws affecting the organization and government of such city which are in conflict therewith. Within thirty days after its approval the election authorities shall certify a copy of such charter to the secretary of state, who shall file the same as a public record in his office, and the same shall be published as an appendix to the session laws enacted by the legislature.

SEC. 4. *Amendments.* Amendments to any such charter may be framed and submitted by a charter commission in the same manner as provided in section 3 for framing and adopting a charter. Amendments may also be proposed by two-thirds of the legislative authority of the city, or by petition of ten per cent of the electors;

and any such amendment, after due public hearing before such legislative authority, shall be submitted at a regular or special election as is provided for the submission of the question of choosing a charter commission. Copies of all proposed amendments shall be sent to the qualified electors. Any such amendment approved by a majority of the electors voting thereon shall become a part of the charter of the city at the time fixed in the amendment and shall be certified to and filed and published by the secretary of state as in the case of a charter.

SEC. 5. *Powers.* Each city shall have and is hereby granted the authority to exercise all powers relating to municipal affairs; and no enumeration of powers in this constitution or any law shall be deemed to limit or restrict the general grant of authority hereby conferred; but this grant of authority shall not be deemed to limit or restrict the power of the legislature, in matters relating to state affairs, to enact general laws applicable alike to all cities of the state.

The following shall be deemed to be a part of the powers conferred upon cities by this section:

(a) To levy, assess and collect taxes and to borrow money, within the limits prescribed by general laws; and to levy and collect special assessments for benefits conferred;

(b) To furnish all local public services; to purchase, hire, construct, own, maintain, and operate or lease local public utilities; to acquire, by condemnation or otherwise, within or without the corporate limits, property necessary for any such purposes, subject to restrictions imposed by general law for the protection of other com-

munities; and to grant local public utility franchises and regulate the exercise thereof;

(c) To make local public improvements and to acquire, by condemnation or otherwise, property within its corporate limits necessary for such improvements; and also to acquire an excess over that needed for any such improvement, and to sell or lease such excess property with restrictions, in order to protect and preserve the improvement;

(d) To issue and sell bonds on the security of any such excess property, or of any public utility owned by the city, or of the revenues thereof, or of both, including in the case of a public utility, if deemed desirable by the city, a franchise stating the terms upon which, in case of foreclosure, the purchaser may operate such utility;

(e) To organize and administer public schools and libraries, subject to the general laws establishing a standard of education for the state;

(f) To adopt and enforce within their limits local police, sanitary and other similar regulations not in conflict with general laws.

Sec. 6. *Reports.* General laws may be passed requiring reports from cities as to their transactions and financial condition, and providing for the examination by state officials of the vouchers, books and accounts of all municipal authorities, or of public undertakings conducted by such authorities.

Sec. 7. *Elections.* All elections and submissions of questions provided for in this article or in any charter or law adopted in accordance herewith shall be conducted by the election authorities provided by general law.

SEC. 8. *Consolidation of City and County.* Any city of 100,000 population or over,[1] upon vote of the electors taken in the manner provided by general law, may be organized as a distinct county; and any such city and county may in its municipal charter provide for the consolidation of the county, city and all other local authorities in one system of municipal government, in which provision shall be made for the exercise of all powers and duties vested in the several local authorities. Any such consolidated city and county government shall also have the same powers to levy taxes and to borrow money as were vested in the several local authorities before consolidation.

THE MODEL CHARTER[1]

THE COUNCIL

SECTION 1. *Creation of Council.* There is hereby created a council which shall have full power and au-

[1] This number may be varied to suit local conditions in the several states.

NOTE 1. This model is assumed to be a home rule charter based upon some such provisions for constitutional municipal home rule as those suggested in this report. When this or a similar charter is made available for cities by statute it is desirable that a comprehensive grant of powers be included in the act itself. Otherwise cities securing such a charter will have only the powers enumerated in the general law of the state and be subject to all the restrictions and inconveniences arising from that method of granting powers. It is suggested, therefore, that the following grant of powers be included in any such special statutory charter or optional charter law. The changes of language necessary to adapt it to a special statutory charter readily suggest themselves:

SECTION —. Cities organized under this act shall have and are hereby granted authority to exercise all powers relating to their municipal affairs; and no enumeration of powers in any law shall be deemed to restrict the general grant of authority hereby conferred.

thority, except as herein otherwise provided, to exercise all the powers conferred upon the city.

SEC. 2. *Composition of Council.* The council shall consist of members,[2] who shall be elected

The following shall be deemed to be a part of the powers conferred upon cities by this section:

(a) To levy, assess and collect taxes and to borrow money within the limits prescribed by general law; and to levy and collect special assessments for benefits conferred.

(b) To furnish all local public services; to purchase, hire, construct, own, maintain and operate or lease local public utilities; to acquire, by condemnation or otherwise, within or without the corporate limits, property necessary for any such purposes, subject to restrictions imposed by general law for the protection of other communities; and to grant local public utility franchises and regulate the exercise thereof.

(c) To make local public improvements and to acquire, by condemnation or otherwise, property within its corporate limits necessary for such improvements; and also to acquire an excess over that needed for any such improvement, and to sell or lease such excess property with restrictions, in order to protect and preserve the improvement.

(d) To issue and sell bonds on the security of any such excess property, or of any public utility owned by the city, or of the revenues thereof, or of both, including in the case of a public utility, if deemed desirable by the city, a franchise stating the terms upon which, in case of foreclosure, the purchaser may operate such utility.

(e) To organize and administer public schools and libraries, subject to the general laws establishing a standard of education for the state.

(f) To adopt and enforce within their limits local police, sanitary and other similar regulations not in conflict with general laws.

Except as otherwise provided in this act the council shall have authority to determine by whom and in what manner the powers granted by this section shall be exercised.

NOTE 2. The number of members, and whether they should be chosen at large or from districts being determined by the size of the city. There should be at least 5 members, and 50 would probably suffice for cities of the largest size. Great cities may with advantage be divided into large districts, each to elect five or more members of the council. An effort should be made to keep the size of the districts down to a point where free competition for public office may prevail, the expense of a thorough canvass being not too great for an independent candidate who may lack the support of a permanent political organization.

on a general ticket from the city at large and shall serve for a term of four years from days after their election, and shall be subject to recall as hereinafter provided.[3]

SEC. 3. *Powers of Council.* The council shall be the judge of the election and qualification of its own members, subject to review by the courts. Any member of council who shall have been convicted of a crime while in office shall thereby forfeit his office. Neither the council nor any of its committees or members shall dictate the appointment of any person to office or employment by the city manager, or in any manner interfere with the city manager or prevent him from exercising his own judgment in the appointment of officers and employees in the administrative service. Except for the purpose of inquiry the council and its members shall deal with the administrative service solely through the city manager, and neither the council nor any member thereof shall give orders to any of the subordinates of the city manager, either publicly or privately. Any such dictation, prevention, orders, or other interference on the part of a member of council with the administration of the city shall be deemed to be a misdemeanor, and upon conviction any

If proportional representation is not used and the number of councilmen to be elected at large, or from a single district, is more than five, provision should be made for their election — after the first time in groups. For example, if the number of councilmen to be elected were fifteen and their term were six years, five should be elected every two years.

NOTE 3. In determining whether a salary shall be paid, and if so how much, it must be borne in mind that the duties of the council are supervisory; and that it is the object of this charter to place the administrative affairs of the city in the hands of the city manager.

member so convicted shall be subject to a fine not exceeding $ or imprisonment for a term not exceeding months, or both, and to removal from office in the discretion of the court.

SEC. 4. *Election by Councils. Rules. Quorum.* The council shall elect one of its members as chairman, who shall be entitled mayor; also a city manager, a clerk, and a civil service commission, but no member of the council shall be chosen as manager or as a member of the civil service commission. The council may determine its own rules of procedure, may punish its own members for misconduct, and may compel attendance of members. A majority of all the members of the council shall constitute a quorum to do business, but a smaller number may adjourn from time to time.

SEC. 5. *Organization and Procedure of Council.* At 8 o'clock P. M. on the first Monday in (month) following a regular municipal election, the council shall meet at the usual place for holding meetings, at which time the newly elected councilmen shall assume the duties of their office. Thereafter the council shall meet at such time and place as may be prescribed by ordinance. The meetings of the council and all sessions of committees of the council shall be public. The council shall act only by ordinance or resolution; and all ordinances and resolutions, except ordinances making appropriations, shall be confined to one subject which shall be clearly expressed in the title. The ordinances making appropriations shall be confined to the subject of appropriations. No ordinance shall be passed until it has been read on two separate days or the requirement of readings on two separate days has been dispensed

with by a four-fifths vote of the members of the council. The final reading shall be in full, unless the measure shall have been printed and a copy thereof furnished to each member prior to such reading. The ayes and noes shall be taken upon the passage of all ordinances or resolutions and entered upon the journal of the proceedings of the council, and every ordinance or resolution shall require on final passage the affirmative vote of a majority of all the members. No member shall be excused from voting except on matters involving the consideration of his own official conduct, or where his financial interests are involved. Provision shall be made for the printing and publication in full of every ordinance within ten days after its final passage.

SEC. 6. *Powers of Mayor.* The mayor shall preside at meetings of the council and perform such other duties consistent with his office as may be imposed by the council. He shall be recognized as the official head of the city for all ceremonial purposes, by the courts for the purpose of serving civil processes, and by the governor for military purposes. In time of public danger or emergency he may, with the consent of the council, take command of the police and maintain order and enforce the laws. During his absence or disability his duties shall be performed by another member appointed by the council.

NOMINATIONS AND ELECTIONS

SEC. 7. *Municipal Elections.* A municipal election shall be held on the —— day of —— of the —— year[4] and of every second year thereafter, which shall be

NOTE 4. Municipal elections may be held in the odd years when there is no state or national election. If held in the same year,

known as the regular municipal election. All other municipal elections that may be held shall be known as special municipal elections.

Sec. 8. *Nomination by Petition.* The mode of nomination of candidates for the council provided for by this charter shall be by petition. The name of any elector of the city shall be printed upon the ballot whenever a petition as hereinafter prescribed shall have been filed in his behalf with the election authorities. Such petition shall be signed by at least ——— electors.[5] No elector shall sign more than one such petition, and should an elector do so, his signature shall be void as to the petition or petitions last filed.[6]

Sec. 9. *Signatures to and Forms of Nomination Papers.* The signatures to the nomination petition need not all be appended to one paper, but to each separate paper there shall be attached an affidavit of the circulator thereof, stating the number of signers of such paper and that each signature appended thereto was made in his presence and is the genuine signature of the person whose name it purports to be. With each signature shall be stated the place of residence of the signer, giving the

they should be separated from the latter by at least thirty, and preferably sixty, days.

Note 5. If proportional representation is used, the number of names required on each petition should usually be from one-half of one per cent (in large cities) to one and one-half per cent (in the smallest cities) of the total number of voters. If proportional representation is not used, the number should be from 25 to 200.

Note 6. If proportional representation is not used, this sentence should be stricken out, and the following substituted: "No elector shall sign petitions for more candidates than the number of places of that particular designation to be filled at the election, and should an elector do so his signature shall be void as to the petition or petitions last filed."

street and number or other description sufficient to identify the same. The form of the nomination petition shall be substantially as follows:

We, the undersigned, electors of the city of ....., hereby nominate ....., whose residence is ....., for the office of ....., to be voted for at the election to be held in the city of ....., on the ..... day of ....., 19..; and we individually certify that we are qualified to vote for a candidate for the office named and that we have not signed any other nomination petition for that office.[7]

Name..... Street and Number.....

(Space for signatures.)

....., being duly sworn, deposes and says that he is the circulator of the foregoing petition paper containing ..... signatures, and that the signatures appended thereto were made in his presence and are the signatures of the persons whose names they purport to be.

(Signed) .....

Subscribed and sworn to before me this ..... day of ....., 19...

....., Justice of the Peace (or Notary Public).

This petition, if found insufficient by the election authorities, shall be returned to ..... at No. ..... Street.

SEC. 10. *Filing Nomination Papers.* All nomination papers comprising a petition shall be assembled and filed with the election authorities, as one instrument, not earlier than thirty nor later than fifteen days before the election. Any person nominated under this charter shall file with the election authorities his written acceptance of said nomination not later than twenty days before the

NOTE 7. If proportional representation is not used, this clause should read as follows: "— for a candidate for the office named and that we have not signed more nomination petitions for that office than there are persons to be elected thereto."

day of the election, and in the absence of such acceptance his name shall not appear on the ballot.

Sec. 11. *Regulation of Elections.* The council shall make all needful rules and regulations, not inconsistent with this charter or with general law, for the conduct of elections, for the prevention of fraud in elections, and for the re-count of the ballots in case of doubt or fraud.

Sec. 12. *The Ballots and the Voting.* The full names of candidates nominated for the council in accordance with the provisions of this charter shall be printed on the official ballots in the alphabetical order of the surnames [8] [in rotation. There shall be printed as many sets of ballots as there are candidates. Each set of ballots shall begin with the name of a different candidate, the other names being arranged thereafter in regular alphabetical order, commencing with the name next in alphabetical order after the one that stands first on that set of ballots. When the last name is reached in alphabetical order it shall be followed by the name that begins with the first letter represented in the list of names and by the others in regular order. The ballots so printed shall then be combined in tablets so as to have the fewest possible ballots having the same order of names printed thereon together in the same tablet].

The ballots shall be marked according to the following instructions, which shall be printed at the top of each ballot under the heading of "Directions to Voters."

Note 8. The matter enclosed in the brackets is to be included in the charter only if rotation of the names on the ballots is desired.

Rotation should not be used if proportional representation is used, as it is inconsistent with the quickest and best methods of completing the count under the proportional system.

Put the figure 1 opposite the name of your first choice. If you want to express also second, third, and other choices, do so by putting the figure 2 opposite the name of your second choice, the figure 3 opposite the name of your third choice, and so on. You may express thus as many choices as you please. *The more choices you express, the surer you are to make your ballot count for one of the candidates you favor.*

This ballot will not be counted for your second choice unless it is found that it cannot help your first; it will not be counted for your third choice unless it is found that it cannot help either your first or your second, etc.

A ballot is spoiled if the figure 1 is put opposite more than one name. If you spoil this ballot, tear it across once, return it to the election officer in charge of the ballots, and get another from him.

SEC. 13. *Rules for Counting the Ballots.* Ballots cast for the election of members of the council shall be counted and the results determined by the election authorities according to the following rules:

(a) On all ballots a cross shall be considered equivalent to the figure 1. So far as may be consistent with the general election laws, every ballot from which the first choice of the voter can be clearly ascertained shall be considered valid.

(b) The ballots shall first be sorted and counted at the several voting precincts according to the first choices of the voters. At each voting precinct the ballots cast for each candidate as first choice shall be put up in a separate package, which shall be properly marked on the outside to show the number of ballots therein and the name of the

candidate for whom they were cast. The ballots declared invalid by the precinct officials shall also be put up in a separate package, properly marked on the outside. All the packages of the precinct, together with a record of the precinct count, shall be forwarded to the central election authorities as directed by them, and the counting of the ballots shall proceed under their direction.

(c) After the review of the precinct count by the central election authorities, and the correction of any errors discovered therein, the first-choice votes for each candidate shall be added and tabulated. This completes the first count.

(d) The whole number of valid ballots shall then be divided by a number greater by one than the number of seats to be filled. The next whole number larger than the resulting quotient is the *quota* or *constituency* that suffices to elect a member.

(e) All candidates the number of whose votes on the first count is equal to or greater than the quota shall then be declared elected.

(f) All votes obtained by any candidate in excess of the quota shall be termed his surplus.

(g) The surpluses shall be transferred, the largest surplus first, then the next largest, and so on, according to the following rules.

(h)[9] Ballots capable of transfer up to the number of

Note 9. If it is thought worth while to eliminate the infinitesimal element of chance involved in transferring the surplus ballots according to this rule, the following alternative form of the rule may be substituted:

(h) The transferable ballots of a candidate having a surplus shall be sorted into piles according to the next choice marked on each for a continuing candidate. The non-transferable ballots shall be sorted into a separate pile. The number of ballots in each pile shall then be ascertained.

If the number of the transferable ballots is equal to or less than the surplus, they shall all be successively transferred, each

votes in the surplus shall be successively transferred to the continuing candidates marked on them as next choice in accordance with rule (n). The particular ballots to be taken for transfer as the surplus of a candidate shall be obtained by taking as nearly an equal number of ballots as possible from the ballots capable of transfer that have been cast for him in each of the different precincts. All such surplus ballots shall be taken as they happen to come without selection.

(i) "Ballots capable of transfer" or "transferable ballots" means ballots from which the next choice of the voter for some continuing candidate can be clearly ascertained. A "continuing candidate" is a candidate as yet neither elected nor defeated. "Successively" means one after another separately so far as the work of one electoral official or clerk is concerned; but nothing in this

to the continuing candidate marked on it as next choice in accordance with rule (n).

If the number of the transferable ballots is greater than the surplus, such ballots to the number of the surplus shall be successively transferred, the particular ballots thus taken for transfer as the surplus being taken from the several piles proportionately according to the following directions:

(1) Multiply the number of ballots in each pile of transferable ballots by the fraction of which the numerator is the number of surplus ballots and the denominator is the total number of transferable ballots in the several piles.

(2) Of the fractions that may appear in the resulting products, as many of the largest shall be considered as having the value of one as may be necessary to make the total number of ballots transferred equal to the surplus. All other fractions shall be disregarded.

(3) The product in the case of each pile is the number of ballots to be successively transferred from the pile, each to the continuing candidate marked on it as next choice in accordance with rule (n).

The particular ballots to be taken for transfer from each pile shall be taken as they happen to come to hand without selection.

If any ballot properly reckoned as transferable at the beginning of the process prescribed in this rule (h) becomes non-transferable during the process, it shall be treated thereafter as a non-transferable ballot.

section is meant to prevent the transfer of ballots by two or more officials or clerks simultaneously, provided only that precautions are taken to avoid transferring any ballot to a candidate who has already received the quota.

(j) The transfer of each ballot shall be tallied by the tally clerk assigned to the candidate to whom the ballot is being transferred.

(k) After the transfer of all surpluses, the votes standing to the credit of each candidate shall be added up and tabulated as the second count.

(l) After the tabulation of the second count (or after that of the first count if no candidate received a surplus on the first) every candidate who has no votes to his credit shall be declared defeated. Thereupon the candidate lowest on the poll as it then stands shall be declared defeated, and all his ballots capable of transfer shall be transferred successively to continuing candidates, each ballot being transferred to the credit of that continuing candidate next preferred by the voter, in accordance with rule (n). After the transfer of these ballots a fresh tabulation of results shall be made. In this manner candidates shall be successively declared defeated, and their ballots capable of transfer transferred to continuing candidates, and fresh tabulations of results made. After any tabulation the candidate next to be declared defeated shall be the one then lowest on the poll.

(m) If after the second or any later count (or after the first count if no candidate received a surplus on the first) the total of the votes of two or more candidates lowest on the poll is less than the vote of the next higher candidate, those lowest candidates may be declared defeated simultaneously, and all their ballots capable of transfer transferred successively to continuing candidates, each ballot being transferred to the credit of that continuing candidate next preferred by the voter, in accord-

ance with rule (n). In this operation the ballots of the lowest candidate shall be transferred first, then those of the candidate next higher, and so on. No fresh tabulation of results shall be made until the ballots of all of the candidates thus simultaneously defeated have been transferred.

(n) Whenever in the transfer of a surplus or of the ballots of a defeated candidate the votes of any candidate become equal to the quota, he shall immediately be declared elected and no further transfer to him shall be made.

(o) When candidates to the number of the seats to be filled have received a quota and have therefore been declared elected, all other candidates shall be declared defeated and the election shall be at an end; and when the number of continuing candidates is reduced to the number of seats to be filled, those candidates shall be declared elected whether they have received the full quota or not and the election shall be at an end.

(p) If at any count two or more candidates at the bottom of the poll have the same number of votes, that candidate shall first be declared defeated who was lowest at the next preceding count at which the number of their votes was different. Should it happen that the number is the same on all counts, lots shall be drawn to decide which candidate shall next be declared defeated.

(q) In the transfer of the ballots of any candidate who has received ballots by transfer, those ballots shall first be transferred upon which he was first choice, and the remaining ballots shall be transferred in the order of the counts by which they were received by him.

(r) On each tabulation a record shall be kept, under the designation "non-transferable ballots," of those ballots which have not been used in the election of any candidate and which are not capable of transfer.

(s) Every ballot that is transferred from one candidate to another shall be stamped or marked so that its entire course from candidate to candidate throughout the counting can be conveniently traced. The ballots shall be preserved by the election authorities until the end of the term for which the members of the council are being elected. In case a re-count of the ballots is made, every ballot shall be made to take in the re-count the same course that it took in the original count unless there is discovered a mistake that requires its taking a different course, in which case the mistake shall be corrected and also any further changes made in the course taken by ballots that may be required as a result of the correction. These principles shall apply also to the correction of any error that may be discovered during the original count.

(t) The candidates or their agents, representatives of the press, and, so far as may be consistent with good order and with convenience in the counting and transferring of the ballots, the public shall be afforded every facility for being present and witnessing these operations.

(u) The council shall have power to provide for the use of mechanical devices for marking and sorting the ballots and tabulating the results, and to modify the form of the ballot, the directions to voters, and the details in respect to the methods of counting and transferring ballots accordingly; provided, however, that no change shall be made in the provisions of Sections 12 and 13 of this charter which will alter in any degree the principles of the voting or of the count.

SEC. 14. *Vacancy Provisions.*[10] In the event of a vacancy occurring in the council it shall be filled for the remainder of the unexpired term by that candidate who is credited with most votes as the result of a re-count and

transfer of those ballots by which the member was elected whose place is to be filled.

This re-count shall be carried out in accordance with the provisions of Section 13, the candidate lowest after each transfer being dropped out as defeated until only one is left. At the beginning of this re-count all the original candidates of the last regular election shall be considered "continuing candidates" (as defined in Section 13 (i) except those elected at or since said election, those now ineligible, and those who have withdrawn by written notice to the election authorities.

THE RECALL [11]

SEC. 15. *Recall Provisions.*[12] Any member of the council may be removed from office by recall petition.

Any elector of the city may make and file with the city

NOTE 10. If proportional representation is not used, the following form of this section should be substituted:

SEC. 14. *Vacancy Provisions.* Vacancies in the council, except as otherwise provided herein, shall be filled for the unexpired term by a majority vote of the remaining members.

NOTE 11. The original recall sections, now printed in Note 12, were inserted by a majority vote of the committee. In that form they are not applicable when proportional representation is adopted but may be used when a charter provides some other method of election.

NOTE 12. If proportional representation is not used the following section on the recall should be substituted:

SEC. 15. *Procedure for Filing Recall Petition.* Any officer or officers holding an elective office provided for in this charter may be recalled and removed therefrom by the electors of the city as herein provided.*

Any elector of the city may make and file with the city clerk

* Where a large city is divided into districts for electoral purposes the word "district" should be substituted for "city" in these sections.

clerk an affidavit containing the name or names of any member or members of the council whose removal is sought and a statement of the grounds for removal. The clerk shall thereupon deliver to the elector making such

an affidavit containing the name or names of the officer or officers whose removal is sought and a statement of the grounds for removal. The clerk shall thereupon deliver to the elector making such affidavit copies of petition blanks for such removal, printed forms of which he shall keep on hand. Such blanks shall be issued by the clerk with his signature and official seal thereto attached; they shall be dated and addressed to the council, shall contain the name of the person to whom issued, the number of blanks so issued, the name of the person or persons whose removal is sought and the office from which such removal is sought. A copy of the petition shall be entered in a record book to be kept in the office of the clerk. The recall petition, to be effective, must be returned and filed with the clerk within thirty days after the filing of the affidavit. The petition before being returned and filed shall be signed by electors of the city to the number of at least fifteen per cent of the number of electors who cast their votes at the last preceding regular municipal election, and to every such signature shall be added the place of residence of the signer, giving the street and number or other description sufficient to identify the place. Such signatures need not all be on one paper, but the circulator of every such paper shall make an affidavit that each signature appended to the paper is the genuine signature of the person whose name it purports to be. All such recall papers shall be filed as one instrument, with the endorsements thereon of the names and addresses of three persons designated as filing the same.

Examination and Amendment of Recall Petitions. Within ten days after the filing of the petition the clerk shall ascertain whether or not the petition is signed by the requisite number of electors and shall attach thereto his certificate showing the result of such examination. If his certificate shows the petition to be insufficient, he shall forthwith so notify in writing one or more of the persons designated on the petition as filing the same; and the petition may be amended at any time within ten days, after the giving of said notice, by the filing of a supplementary petition upon additional petition papers, issued, signed and filed as provided herein for the original petition. The clerk shall, within ten days after such amendment, make like examination of the amended petition, and attach thereto his certificate of the result. If then found to be insufficient, or if no amendment was made, he shall file the petition in his office and shall notify each of the

affidavit copies of petition blanks demanding such removal, printed forms of which he shall keep on hand. Such blanks shall be issued by the clerk with his signature and official seal thereto attached; they shall be dated and addressed to the council and shall contain the name

persons designated thereon as filing it of that fact. The final finding of the insufficiency of a petition shall not prejudice the filing of a new petition for the same purpose.

Calling of Recall Election. If the petition or amended petition shall be certified by the clerk to be sufficient he shall submit the same with his certificate to the council at its next meeting and shall notify the officer or officers whose removal is sought of such action. The council shall thereupon, within ten days of the receipt of the clerk's certificate, order an election to be held not less than thirty nor more than forty-five days thereafter. *Provided,* that if any other municipal election is to occur within sixty days after the receipt of said certificate, the council may in its discretion provide for the holding of the removal election on the date of such other municipal election.

Form of Ballot to Recall Officer. Unless the officer or officers whose removal is sought shall have resigned within ten days after the receipt by the council of the clerk's certificate the form of the ballot at such election shall be as nearly as may be: "Shall A be recalled? Shall B be recalled?" etc., the name of the officer or officers whose recall is sought being inserted in place of A, B, etc., and the ballot shall also contain the names of the candidates to be elected in place of the men recalled, as follows: "Candidates for the place of A, if recalled; candidates for the place of B, if recalled," etc., but the men whose recall is sought shall not themselves be candidates upon such ballot.

In case a majority of those voting for and against the recall of any official shall vote in favor of recalling such official he shall be thereby removed, and in that event the candidate who receives the highest number of votes for his place shall be elected thereto for the balance of the unexpired term.

If the officer or officers sought to be removed shall have resigned within ten days after the receipt by the council of the clerk's certificate referred to in this section above hereof, the form of ballot at the election shall be the same, as nearly as may be, as the form in use at a regular municipal election.

Procedure on Refusal of Council. Should the council fail or refuse to order an election as herein provided within the time required, such election may be ordered by any court of general jurisdiction in the county in which said city is situated.

of the person to whom issued, the number of blanks so issued, and the name of the member whose removal is sought. A copy of the petition shall be entered in a record book to be kept in the office of the clerk. The recall petition to be effective must be returned and filed with the clerk within thirty days after the filing of the affidavit. To be effective the petition must also bear the signatures of electors of the city to the number of at least twenty-five per cent of the number of electors who cast their votes at the last preceding regular municipal election, and it must include the signatures of at least sixty per cent of the voters who signed the nomination petition of the member whose recall is demanded. To every signature on the petition shall be added the place of residence of the signer, the street and number or other description sufficient to identify the place. Such signatures need not all be on one paper, but the circulator of each such paper shall make an affidavit that each signature appended to the paper is the genuine signature of the person whose name it purports to be. The required number of signatures of electors who signed the nomination petition of the member whose recall is demanded shall be on one paper separate from those containing the other signatures. All such recall petition papers shall be filed as one instrument, with the endorsement thereon of the names and addresses of three persons designated as filing the same.

On receiving the recall petition, the city clerk shall examine it promptly. If he finds it to be sufficient according to the provisions of this section he shall certify

that fact to the council, and at the expiration of thirty days from the time when the petition was filed the member whose recall is demanded shall be deemed removed from office.

Any vacancy caused by the recall of a member shall be filed in accordance with Section 14.

THE INITIATIVE [13]

SEC. 16. *Power to Initiate Ordinances.* The people shall have power at their option to propose ordinances, including ordinances granting franchises or privileges, and other measures and to adopt the same at the polls, such power being known as the initiative. A petition, meeting the requirements hereinafter provided and requesting the council to pass an ordinance, resolution, order, or vote (all of these four terms being hereinafter included in the term "measure") therein set forth or designated, shall be termed an initiative petition and shall be acted upon as hereinafter provided.

SEC. 17. *Preparation of Initiative Petitions.* Signatures to initiative petitions need not all be on one paper, but the circulator of every such paper shall make an affidavit that each signature appended to the paper is the genuine signature of the person whose name it purports to be. With each signature shall be stated the place of residence of the signer, giving the street and number or other description sufficient to identify the place. All such papers pertaining to any one measure shall have written or printed thereon the names and

NOTE 13. The initiative sections were inserted by a majority vote of the committee.

addresses of at least five electors who shall be officially regarded as filing the petition, and shall constitute a committee of the petitioners for the purposes hereinafter named. All such papers shall be filed in the office of the city clerk as one instrument. Attached to every such instrument shall be a certificate signed by the committee of petitioners or a majority of them stating whether the petition is intended to be a "Fifteen Per Cent Petition" or a "Twenty-five Per Cent Petition."

Sec. 18. *Filing of Petitions.* Within ten days after the filing of the petition the clerk shall ascertain by examination the number of electors whose signatures are appended thereto and whether this number is at least fifteen per cent or twenty-five per cent, as the case may be, of the total number of electors who cast their votes at the last preceding regular municipal election, and he shall attach to said petition his certificate showing the result of said examination. If, by the clerk's certificate, of which notice in writing shall be given to one or more of the persons designated, the petition is shown to be insufficient it may be amended within ten days from the date of said certificate by filing supplementary petition papers with additional signatures. The clerk shall within ten days after such amendment make like examination of the amended petition, and if his certificate shall show the same to be insufficient, the clerk shall file the petition in his office and shall notify each member of the committee of that fact. The final finding of the insufficiency of a petition shall not prejudice the filing of a new petition for the same purpose.

SEC. 19. *Submission of Petition to Council.* If the petition shall be found to be sufficient, the clerk shall so certify and submit the proposed measure to the council at its next meeting, and the council shall at once read and refer the same to an appropriate committee, which may be a committee of the whole. Provision shall be made for public hearings upon the proposed measure before the committee to which it is referred. Thereafter the committee shall report the proposed measure to the council, with its recommendation thereon, not later than sixty days after the date upon which such measure was submitted to the council by the clerk. Upon receiving the proposed measure from the committee the council shall at once proceed to consider it and shall take final action thereon within thirty days from the date of such committee report.

SEC. 20. *Election on Initiated Measures.* If the council shall fail to pass the proposed measure, or shall pass it in a form different from that set forth in the petition, then if the petition was a "twenty-five per cent petition" the proposed measure shall be submitted by the council to the vote of the electors at the next election occurring not less than thirty days after the date of the final action by the council, and if no election is to be held within six months from such date, then the council shall call a special election to be held not less than thirty nor more than forty-five days from such date. But if the petition was a "fifteen per cent petition" the proposed measure shall be submitted as in the case of a "twenty-five per cent petition," except that no special election shall

be called unless within thirty days after the final action by the council on the proposed measure a supplemental petition shall be filed with the clerk signed by a sufficient number of additional electors asking for the submission of the proposed measure so that the original petition when combined with such supplementary petition shall become a "twenty-five per cent petition." In case such supplementary petition is filed the council shall call a special election to be held not less than thirty nor more than forty-five days after the receipt of the clerk's certificate that a sufficient supplementary petition has been filed. The sufficiency of any such supplementary petition shall be determined, and it may be amended, in the manner provided for original petitions. When submitted the measure shall be either in its original form, or with any proposed change or addition which was presented in writing either at the public hearing before the committee to which such proposed measure was referred, or during the consideration thereof by the council; and said committee of petitioners shall certify to the clerk the requirement of submission and the proposed measure in the form desired, within ten days after the date of final action on such measure by the council. Upon receipt of the certificate and certified copy of such measure, the clerk shall certify the fact to the council at its next meeting and such measure shall be submitted by the council to the vote of the electors in a regular or special municipal election as hereinbefore provided.

Sec. 21. *Initiative Ballots.* The ballots used when voting upon any such proposed measure shall state the substance thereof, and below it the two propositions "For

the measure" and "Against the measure." Immediately at the right of each proposition there shall be a square in which by making a cross (X) the voter may vote for or against the proposed measure. If a majority of the electors voting on any such measure shall vote in favor thereof, it shall thereupon become an ordinance, resolution, order or vote of the city as the case may be.

The following shall be the form of the ballot:

TITLE OF MEASURE

With general statement of substance thereof

For the Measure	
Against the Measure	

Sec. 22. *Number of Measures to be Initiated.* Any number of proposed measures may be voted upon at the same election in accordance with the provisions of this charter.

THE REFERENDUM [14]

Sec. 23. *Power of Referendum.* The people shall have power at their option to approve or reject at the polls any measure passed by the council or submitted by the council to a vote of the electors, such power being known as the referendum, which power shall be invoked and exercised as herein provided. Measures submitted to the council by initiative petition and passed by the council without change, or passed in an amended form

Note 14. The referendum sections were inserted by a majority vote of the committee.

and not required by the committee of the petitioners to be submitted to a vote of the electors, shall be subject to the referendum in the same manner as other measures.

Sec. 24. *Limitations on Enforcement of Ordinances.* No measure shall go into effect until thirty days after its passage unless it be declared an emergency measure on the ground of urgent public need for the preservation of peace, health, safety, or property, the facts showing such urgency and need being specifically stated in the measure itself and the measure being passed by a vote of not less than four-fifths of the members of the council. But no measure granting or amending any public utility measure or amending or repealing any measure adopted by the people at the polls or by the council in compliance with an initiative petition, shall be regarded as an emergency measure.

Sec. 25. *Referendum Petition.* If within thirty days after the final passage of any measure by the council a petition signed by electors of the city to the number of at least 10 per cent of the number of electors who cast their votes at the last preceding regular municipal election, be filed with the city clerk requesting that any such measure, or any part thereof, be repealed or be submitted to a vote of the electors, it shall not, except in the case of an emergency measure, become operative until the steps indicated herein have been taken.

Sec. 26. *Signatures to Petition.* The signatures thereto need not all be on one paper, but the circulator of every such paper shall make an affidavit that each signature appended thereto is the genuine signature of the

person whose name it purports to be. With each signature shall be stated the place of residence of the signer, giving the street and number or other description sufficient to identify the place. All such papers shall be filed in the office of the city clerk as one instrument. A referendum petition need not contain the text of the measure designated therein and of which the repeal is sought.

SEC. 27. *Certification of Petition.* Within ten days after the filing of the petition the clerk shall ascertain whether or not the petition is signed by the electors of the city to the number of at least 10 per cent of the number of electors who cast their votes at the last preceding regular municipal election, and he shall attach to such petition his certificate showing the result of such examination. If by the clerk's certificate the petition is shown to be insufficient, it may be amended within ten days from the date of said certificate by the filing of supplementary petition papers with additional signatures. The clerk shall within ten days after such amendment make like examination of the amended petition and certify the result thereof.

SEC. 28. *Referendum Election.* If the petition be found sufficient, the council shall proceed to reconsider such measure or such part thereof as the petition shall specify. If upon such reconsideration such measure, or such part thereof, be not repealed or amended as demanded in the petition, the council shall provide for submitting the same, by the method herein provided, to a vote of the electors at the next municipal election occurring not less than thirty days after the receipt by the council of the clerk's certificate, and such measure, or such part

thereof, shall thereupon be suspended from going into effect until said election and shall then be deemed repealed unless approved by a majority of those voting thereon. Or the council by a four-fifths vote may submit such measure or part thereof with like effect to the electors at a special election to be called by said council not less than thirty days after the receipt of said clerk's certificate.

Sec. 29. *Title of Ballot.* Proposed measures and charter amendments shall be submitted by ballot title. There shall appear upon the official ballot a ballot title which may be distinct from the legal title of any such proposed measure or charter amendment and which shall be a clear, concise statement, without argument or prejudice, descriptive of the substance of such measure or charter amendment. The ballot title shall be prepared by the committee of the petitioners if for an initiated or a referendum measure, or by a committee of the council when submitted by the council.

Sec. 30. *Form of Ballot.* The ballots used when voting upon such proposed measure shall designate the same, and below it the two propositions, "For the measure" and "Against the measure."

Sec. 31. *Emergency Measures.* Measures passed as emergency measures shall be subject to referendum like other measures, except that they shall not be suspended from going into effect while referendum proceedings are pending. If, when submitted to a vote of the electors, an emergency measure be not approved by a majority of those voting thereon, it shall be considered repealed, as regards any further action thereunder and all rights and privileges conferred by it shall be null and void: *Pro-*

vided, however, that such measure so repealed shall be deemed sufficient authority for any payment made or expense incurred in accordance with the measure previous to the referendum vote thereon.

SEC. 32. *Official Publicity Pamphlet.* The city clerk, at least fifteen days before any election at which any measure or charter amendment is to be submitted, shall print and mail to each elector qualified to vote thereon an official publicity pamphlet containing the full text of every measure or charter amendment submitted, with their respective ballot titles, together with arguments, for or against such measures or charter amendments, which may have been filed with the city clerk not less than twenty days before such election. Such arguments shall be signed by the person, persons, or officers of organizations authorized to submit and sign the same, who shall deposit with the city clerk at the time of filing a sum of money sufficient to cover the proportionate cost of the printing and paper for the space taken, but no more. The text of every measure or charter amendment shall also be displayed at the polling booths in such election. *Provided,* that the validity of a measure or charter amendment approved by the electors shall not be questioned because of errors or irregularities in such mailing, distribution or display.

SEC. 33. *Conflict of Referred Measures.* If two or more measures adopted or approved at the same election conflict in respect of any of their provisions, they shall go into effect in respect of such of their provisions as are not in conflict and the one receiving the highest affirmative vote shall prevail in so far as their provisions conflict.

ADMINISTRATIVE SERVICES — THE CITY MANAGER [15]

SEC. 34. *The City Manager.* The city manager shall be the chief executive officer of the city. He shall be chosen by the council solely on the basis of his executive and administrative qualifications. The choice shall not be limited to inhabitants of the city or state.[16]

The city manager shall receive a compensation of not less than a year.[17] He shall be appointed for an indefinite period. He shall be removable by the council. If removed at any time after six months he may demand written charges and a public hearing on the same before the council prior to the date on which his final removal shall take effect, but during such hearing the council may

NOTE 15. While the manager plan herein proposed is probably the most advanced and scientific form of municipal organization yet suggested, it is of the highest importance that any city adopting the plan should not omit any of the other principal features accompanying it in this draft. Without these provisions the manager plan, owing to its concentration of executive and administrative authority in the manager, might prove to be susceptible to perversion in the interest of a boss in cities with an undeveloped and inactive public opinion, because the members of council might then be elected upon a slate pledged beforehand to the selection of some particular candidate as manager.

It is also true that no form of government can in and of itself produce good results. The most that any plan can do is to provide an organization which lends itself to efficient action, and which at the same time places in the hands of the electorate simple and effective means for controlling their government in their own interests. The evils in city government due to defective and undemocratic organization can thus be removed; beyond that, results can only be achieved through the growth of an active and enlightened public opinion.

NOTE 16. The foreign plan of publicly advertising for a burgomeister and heads of departments and selecting the ones who show the highest qualifications has been highly successful.

NOTE 17. The minimum salary would vary according to the size of the city and the responsibilities of the office. Dayton, Ohio, a city of 117,000 inhabitants, paid its first city manager a salary of $12,500 per year.

suspend him from office. During the absence or disability of the city manager the council shall designate some properly qualified person to perform the duties of the office.

SEC. 35. *Powers and Duties of the City Manager.* The city manager shall be responsible to the council for the proper administration of all affairs of the city, and to that end shall make all appointments, except as otherwise provided in this charter. Except when the council is considering his removal, he shall be entitled to be present at all meetings of the council and of its committees and to take part in their discussion.

SEC. 36. *Annual Budget.* The city manager shall prepare and submit to the council the annual budget after receiving estimates made by the directors of the departments.

ADMINISTRATIVE DEPARTMENTS

SEC. 37. *Administrative Departments Created.* There shall be six administrative departments as follows: Law, health, works and utilities, safety and welfare, education,[18] and finance, the functions of which shall be prescribed by the council except as herein otherwise provided. The council shall fix all salaries, which in the classified service shall be uniform for each grade, as established by the civil service commission, and the council may, by a three-fourths vote of its entire membership, create new departments, combine or abolish existing depart-

NOTE 18. In places where the school system works well under a separate organization it had better not be disturbed, and in such cases the department of education will generally have to be omitted.

ments or establish temporary departments for special work.[19]

SEC. 38. *Duties of Directors of Departments.* At the head of each department there shall be a director. Each director shall be chosen on the basis of his general executive and administrative experience and ability and of his education, training, and experience in the class of work which he is to administer. The director of the department of law shall be a lawyer; of health, a sanitary engineer or a member of the medical profession; of works, an engineer; of education, a teacher by profession; of safety and welfare, a man who has had administrative experience; and of finance, a man who has had experience in banking, accounting, or other financial matters; or in

NOTE 19. The number of departments may be increased or diminished according to the population or other local needs of a given city. Where it is increased it will probably be desirable to divide the department of safety and welfare into two departments, and in some cases to divide the department of safety into police and fire departments. The department of utilities may be separated from department of public works when (1) the utilities are privately owned, so that their administration is chiefly regulative; and (2) in large cities where the department of works and utilities would make too large a department or where it seems desirable to put all the revenue-producing industries in one department. In reducing the number of departments, those of law, health, and finance might be cut out in the order named, either joining them with other departments (as health with welfare and safety) or making them directly subordinate to the city manager.

The number of departments can be kept down in the larger cities and reduced in the smaller ones (1) by the creation of department bureaus and (2) where so complex an organization as a bureau is not needed by having the proper official report directly to the city manager instead of to a department head.

The principle underlying the formation of departments and bureaus should be twofold: (1) functional grouping and (2) tasks which demand the time and capacity of the highest grade of administrative heads — *i. e.*, one first-class full-time man to head each department.

each case the man must have rendered active service in the same department in this or some other city.

Each director shall be appointed by the city manager and may be removed by him at any time; but in case of such removal, if the director so demands, written charges must be preferred by the city manager, and the director shall be given a public hearing before the order of removal is made final. The charges and the director's reply thereto shall be filed with the clerk of council.

SEC. 39. *Responsibility of Directors of Departments.* The directors of departments shall be immediately responsible to the city manager for the administration of their departments, and their advice in writing may be required by him on all matters affecting their departments. They shall prepare departmental estimates, which shall be open to public inspection, and they shall make all other reports and recommendations concerning their departments at stated intervals or when requested by the city manager.

SEC. 40. *Powers of Subpœna.* The council, the city manager, and any officer or board authorized by them, or either of them, shall have power to make investigations as to city affairs, to subpœna witnesses, administer oaths, and compel the production of books and papers.

CIVIL SERVICE BOARD

SEC. 41. *Creation of Civil Service Board.* A civil service board shall be appointed by the council to consist of three members. The terms of the members when the first appointments are made shall be so arranged as to expire one every two years, and each appointment made

thereafter upon the expiration of any term shall be for six years. The council shall also fill any vacancy for an unexpired term. A member of the board shall be removable for neglect, incapacity, or malfeasance in office by a four-fifths vote of the council, after written charges upon at least ten days' notice and after a public hearing.

The board shall employ a secretary and a chief examiner (but the same person may perform the duties of both offices) and such further examiners and such clerical and other assistance as may be necessary, and shall determine the compensation of all persons so employed. Provision shall be made in the annual budget and appropriation bill for the expenses of the board.

SEC. 42. *Power to Make Rules and What the Rules Shall Provide.* The board shall, after public notice and hearing, make, promulgate, and, when necessary, amend rules for the appointment, promotion, transfer, lay off, reinstatement, suspension, and removal of city officials and employees, reporting its proceedings to the council and to the city manager when required. Such rules shall, among other things, provide:

(a) For the standardization and classification of all positions and employments in the civil service of the city. The classification into groups and subdivisions shall be based upon and graded according to their duties and responsibilities and so arranged as to promote the filling of the higher grades, so far as practicable, through promotion. All salaries shall be uniform for like service in each grade as the same shall be standardized and classified by the civil service board. The civil service so standardized and classified shall not include officers

elected by the people, the city manager, nor the judges, and may or may not include the directors of executive departments, or the superintendents, principals, and teachers of the public schools, as may be directed by the council.

(b) For open competitive tests, to ascertain the relative fitness of all applicants for appointment to the classified civil service of said city, including mechanics and laborers — skilled and unskilled. Such tests shall be practical and shall relate to matters which will fairly measure the relative fitness of the candidates to discharge the duties of the positions to which they seek to be appointed. Notice of such tests shall be given not less than ten days in advance by public advertisement in at least one newspaper of general circulation, and by posting a notice in the city hall. The board may, by unanimous vote, provide for non-competitive tests for any position requiring peculiar and exceptional qualifications of a scientific, managerial, professional, or educational character, but all such actions of the board with the reasons therefor shall be published in its annual report.

(c) For the creation of eligible lists upon which shall be entered the names of successful candidates in the order of their standing in examination, and for the filling of places in the civil service of the city by selection from not more than the three candidates graded highest on such eligible lists. Eligible lists shall remain in force not longer than two years.

In the absence of an appropriate eligible list, any place may be filled temporarily without examination for a period limited by the rules, but not to exceed sixty days,

during which time the board shall hold the necessary examination for filling the place permanently. With the consent of the board persons may be temporarily employed for transitory work without examination, but such employment shall not continue for more than sixty days, or be renewed.

No person shall be appointed or employed under any title not appropriate to the duties to be performed, and no person shall be transferred to or assigned to perform any duties of any position subject to competitive tests unless he shall have been appointed to the position from which transfer is made as the result of an open competitive test equivalent to that required for the position to be filled, or unless he shall have served with fidelity for at least two years immediately preceding in a similar position in the city. Each list of eligibles, with the respective grades, shall be open to public inspection.

Any person appointed from an eligible list and laid off for lack of work or of appropriation shall be placed at the head of the eligible list and shall be eligible for reappointment for the period of eligibility as provided by the rules of the board.

(d) For a period of probation not exceeding six months before an appointment or employment is made permanent.

(e) For reinstatement on the eligible lists of persons who without fault or delinquency are separated from the service.

(f) For promotion from the lower grades to the higher, based upon competitive records of efficiency and seniority to be furnished by the departments in which the

person is employed and kept by said civil service board, or upon competitive promotion tests, or both. Appointments to such higher positions as shall be specified by the board may, if the city manager approves, be made after competitive tests in which persons not in the service of the city may also compete as well as applicants for such positions from the lower grades of the service or from other branches thereof; and the appointments shall be made to such higher positions from those standing highest as in the case of other competitive tests. An increase in compensation within a grade may be granted upon the basis of efficiency and seniority records.

Sec. 43. *Supervisory Powers of Civil Service Board.* It shall be the duty of the civil service board to supervise the execution of the civil service sections and the rules made thereunder, and it shall be the duty of all persons in the public service of said city to comply with said rules and aid in their enforcement.

The said board shall keep public records of its proceedings, of the markings and gradings upon examinations, and of all recommendations or certificates of the qualifications of applicants for office or employment; and it shall also keep a public record of the conduct and efficiency of each person in the service of the city, to be furnished by the head of the department in which such person is employed in such form and manner as the board may prescribe.

The board may make investigations concerning the facts in respect to the execution of the civil service sections and of the rules established thereunder and concerning the general condition of the civil service of the city

or any branch thereof. The board shall fix standards of efficiency and recommend measures for coördinating the operation of the various departments and for increasing individual, group, and departmental efficiency. Each member of the board, or any person whom the board may appoint to make such investigations, shall have power to administer oaths, to compel the production of books and papers, and to subpœna witnesses.

The board shall keep a complete public roster of all persons in the service of the city and certify to the proper official the name and compensation of each person employed; also every change occurring in any office or employment; and no treasurer or other public disbursing officer shall pay and no controller or other auditing officer shall authorize the payment of any salary or compensation to any person holding a position in the classified service, unless the pay roll or account for such salary or compensation shall bear the certificate of the board that the person named therein has been appointed or employed and is performing services in accordance with the provisions of this charter and the rules hereby authorized. Any sums paid contrary to the provisions of this section may be recovered from any officer paying or authorizing the payment thereof and from the sureties on his official bond.

Sec. 44. *Power of Rèmoval and Suspension.* Any officer or employee in the classified service may be removed, suspended, laid off, or reduced in grade by the city manager or by the head of the department in which he is employed, for any cause which will promote the efficiency of the service; but he must first be furnished with a

written statement of the reasons therefor and be allowed a reasonable time for answering such reasons in writing, which answer, if he so request, shall (so far as the same is relevant and pertinent) be made a part of the records of the board; and he may be suspended from the date when such written statement of reasons is furnished him. No trial or examination of witnesses shall be required in such case except in the discretion of the officer making the removal. In all cases provided for in this paragraph the action of the city manager or head of the department shall be final.

The civil service board shall also have the right to remove or reduce any official or employee in the classified service upon written charges of misconduct preferred by any citizen, but only after reasonable notice to the accused and full hearing. It shall also be the duty of the board to fix a minimum standard of conduct and efficiency for each grade in the service, and whenever it shall appear from the reports of efficiency made to said board, for a period of three months, that the conduct and efficiency of any employee has fallen below this minimum, that employee shall be called before the board to show cause why he should not be removed, and if upon hearing no reason is shown satisfactory to the board he shall be removed, suspended, or reduced in grade, as the board shall determine.

Sec. 45. *Restrictions on Civil Service Appointees and Forbidden Practices.* No person shall willfully or corruptly make any false statement, certificate, mark, grading, or report in regard to any examination or appointment held or made under this article, or in any other

manner attempt to commit any fraud upon the impartial execution of this article or of the civil service rules and regulations.

No person in the classified service shall directly or indirectly give, solicit, or receive or be in any manner concerned in giving, soliciting, or receiving any assessment, subscription, or contribution for any political party or purpose whatever. No person whosoever shall orally or by letter solicit or be in any manner concerned in soliciting any assessment, subscription, or contribution for any political party or purpose from any person holding a position in the classified service. No person shall use or promise to use his influence or official authority to secure any appointment or prospect of appointment to any position classified and graded under this charter as a reward or return for personal or partisan political service. No person about to be appointed to any position classified and graded under this charter shall sign or execute a resignation dated or undated in advance of such appointment. No person in the service of the city shall discharge, suspend, lay off, degrade, or promote, or in any manner change the official rank or compensation of any other person in said service, or promise or threaten to do so for withholding or neglecting to make any contribution of money or service or any other valuable thing for any political purpose.

No person shall take part in preparing any political assessment, subscription, or contribution with the intent that the same shall be sent or presented to or collected from any person in the classified service of the city; and no person shall knowingly send or present, directly or

indirectly, in person or by letter, any political assessment, subscription, or contribution to, or request its payment by any person in the classified service.

No person in the service of the city shall use his official authority or influence to coerce the political action of any person or body, or to interfere with any nomination or election to public office.

No person holding office or place classified and graded under the provisions of this article shall act as an officer of a political organization or take any active part in a political campaign or serve as a member of a committee of any such organization or circulate or seek signatures to any petition provided for by any primary or election laws, other than an initiative or referendum petition, or act as a worker at the polls in favor of or opposed to any candidate for election or nomination to a public office, whether federal, state, county or municipal.

Sec. 46. *Politics and Religion Excluded.* No question in any examination held hereunder shall relate to political or religious opinions, affiliations, or service; and no appointment, transfer, lay off, promotion, reduction, suspension or removal shall be affected or influenced by such opinions, affiliations or service.

Sec. 47. *Violations of Civil Service Rules and Regulations.* Any person who shall willfully, or through culpable negligence, violate any of the civil service provisions of this charter or of the rules of the board made in pursuance thereof shall be guilty of a misdemeanor, and shall, on conviction, be punished by a fine of not less than $50 nor more than $1,000, or by imprisonment for a term not exceeding six months, or by both such fine and im-

prisonment. If such person be an applicant for examination he shall be excluded therefrom. If he be an eligible his name shall be removed from the eligible list, and if he be an officer or employee of the city he shall thereby be removed forthwith from the service.

Sec. 48. *Power of Taxpayer to Enforce Rules.* Any taxpayer in the city may maintain an action to recover for the city any sum of money paid in violation of the civil service provisions, or to enjoin the board from attaching its certificate to a payroll or account for services rendered in violation of this charter or the rules made thereunder; and the rules made under the foregoing provisions shall for this and all other purposes have the force of law.

FINANCIAL PROVISIONS

Sec. 49. *The Director of Finance.* The director of finance shall have direct supervision over the department of finance and the administration of the financial affairs of the city, including the keeping of accounts and financial records; the levy, assessment and collection of taxes, special assessments, and other revenues (except as otherwise provided by general law); the custody and disbursement of city funds and moneys; the control over expenditures; and such other duties as the council may, by ordinance, provide.

Sec. 50. *Accounts and Records.* Accounts shall be kept by the department of finance showing the financial transactions for all departments of the city. Forms for all such accounts shall be prescribed by the director of finance with the approval of the city manager; and shall

be adequate to record all cash receipts and disbursements, all revenues accrued and liabilities incurred, and all transactions affecting the acquisition, custody, and disposition of values, and to make such reports of the financial transactions and condition of the city as may be required by law or ordinance. Financial reports shall be prepared for each quarter and each fiscal year, and for such other periods as may be required by the city manager or, the council.

SEC. 51. *Annual Budget.* Not later than one month before the end of each fiscal year the city manager shall prepare and submit to the council an annual budget for the ensuing fiscal year, based upon detailed estimates furnished by the several departments and other divisions of the city government, according to a classification as nearly uniform as possible. The budget shall present the following information:

(a) An itemized statement of the appropriations recommended by the city manager for current expenses and for permanent improvements for each department and each division thereof for the ensuing fiscal year, with comparative statements in parallel columns of the appropriations and expenditures for the current and next preceding fiscal year, and the increases or decreases in the appropriations recommended;

(b) An itemized statement of the taxes required and of the estimated revenues of the city from all other sources for the ensuing fiscal year, with comparative statements in parallel columns of the taxes and other revenues for the current and next preceding fiscal year, and of the increases or decreases estimated or proposed;

(c) A statement of the financial condition of the city; and

(d) Such other information as may be required by the council.

Copies of the budget shall be printed and available for distribution not later than two weeks after its submission to the council; and a public hearing shall be given thereon by the council or a committee thereof before action by the council.

SEC. 52. *Appropriation Ordinance. Temporary Appropriations. Transfers.* Not later than one month after the beginning of the fiscal year the council shall pass an annual appropriation ordinance, which shall be based on the budget submitted by the city manager. The total amount of appropriations shall not exceed the estimated revenues of the city.

Before the annual appropriation ordinance has been passed, the council, with the approval in writing of the city manager, may make appropriations for current department expenses, chargeable to the appropriations of the year when passed, to an amount sufficient to cover the necessary expenses of the various departments until the annual appropriation is in force. No other liabilities shall be incurred by any officer or employee of the city, except in accordance with the provisions of the annual appropriation ordinance, or under continuing contracts and loans authorized under the provisions of this charter.

At any meeting after the passage of the appropriation ordinance, and after at least one week's public notice, the council, by a three-fourths vote, may amend such ordinance, so as to authorize the transfer of unused balances

appropriated for one purpose to another purpose, or to appropriate available revenues not included in the annual budget.

SEC. 53. *Tax Levy.* On or before the day of in each year, the council shall, by ordinance, levy such tax as may be necessary to meet the appropriations made (less the estimated amount of revenue from other sources) and all sums required by law to be raised on account of the city debt, together with such addition, not exceeding five per cent, as may be necessary to meet commissions, fees, and abatements in the amount of taxes collected from the estimates.

SEC. 54. *Assessment of Property.* All property subject to *ad valorem* taxation shall be valued at its fair market value, subject to review and equalization, as provided by law or ordinance. In valuing improved real estate for taxation the market value of the land shall be valued separately; and improvements thereon shall be valued at the amount by which they increase the value of the land.

SEC. 55. *Special Assessments.* The council shall have power by ordinance to provide for the payment of all or any part of the cost of the construction, reconstruction, repair, operation, or maintenance of any structure or work in the nature of a public improvement, including a public utility, by levying and collecting special assessments upon abutting, adjacent and contiguous, or other property specially benefited. Such special assessments for works of construction or reconstruction may be payable in installments within a period of not more than ten years. The amount so assessed against any property shall not exceed the amount of benefits accruing to such

property from such improvement and the operation thereof. Provision shall be made by ordinance for the method of levying and apportioning such special assessments, for the publication of plans, for serving notices on the owners of property affected, and for hearing complaints and claims before final action thereon.

Sec. 56. *Bond Issues.* Money may be borrowed by the issue and sale of bonds, pledged on the credit of the city, or on the property or revenues of any public utility owned by the city, for the purchase of land, the construction and equipment of buildings and other permanent public improvements, and for the payment or refunding of bonds previously issued. No ordinance providing for the issue of bonds shall be passed without public notice at least two weeks before final action by the council, and either the approval of two-thirds of all the members of the council or submission to the electors of the city at a regular or special election and the approval of a majority of those voting thereon. No bonds shall be issued on the credit of the city which shall increase the bonded indebtedness of the city beyond per cent of the assessed valuation of property in the city subject to direct taxation, as shown by the last preceding valuation for city taxes.[20] Every issue of bonds shall be payable within a term of years not to exceed the estimated period of utility of the improvement for which they are issued, and in no case to exceed thirty years;[21] and shall be payable in

Note 20. If desired, provision may be made for the issue of bonds outside the debt limit on the credit of the city for self-sustaining utilities.

Note 21. In cities where subways and other improvements of extraordinary cost and permanency may be needed this period may be extended to fifty years.

equal annual serial installments, including principal and interest. Every ordinance for the issue of bonds shall provide for a tax levy for each year to meet the annual serial installments of principal and interest, and such amounts shall be included in the tax levy for each year.[22]

Sec. 57. *Temporary Loans.* Money may be borrowed, in anticipation of the receipts from taxes during any fiscal year, by the issue of notes, certificates of indebtedness, or revenue bonds; but the aggregate amount of such loans at any time outstanding shall not exceed per cent. of the receipts from taxes during the preceding fiscal year; and all such loans shall be paid out of the receipts from taxes for the fiscal year in which they are issued. If upon the day of there shall be any outstanding loans or notes for money borrowed in anticipation of taxes prior to the adoption of this charter, such loans or any part thereof may be renewed or refunded by the issue of notes, certificates of indebtedness, or revenue bonds, payable in equal annual installments with interest for not more than five successive years. No temporary loans authorized by this section shall be made without public notice at least two weeks before final action by the council, and the approval of two-thirds of all the members of the council.

Sec. 58. *Restrictions on Loans and Credit.* No money shall be borrowed by the city except for the issue of bonds or temporary loans, as authorized by sections

Note 22. For cities having sinking funds, provision should be made for their continuation and management until maturity. The sinking fund board may consist of the mayor, the director of finance and three other members appointed by the council for a term of four years, to serve without compensation.

56 and 57 of this charter, and subject to the limitations prescribed by law and this charter. The credit of the city shall not in any manner be given or loaned to or in aid of any individual, association, or corporation, except that suitable provision may be made for the aid and support of its poor.

SEC. 59. *Collection and Custody of City Moneys.* All taxes, special assessments, and license fees accruing to the city shall be collected by officers of the department of finance. All moneys received by any officer or employee of the city for or in connection with the business of the city shall be paid promptly into the city treasury, and shall be deposited with such responsible banking institutions as furnish such security as the council may determine and shall agree to pay the highest rate of interest; and all such interest shall accrue to the benefit of the city. The council shall provide by ordinance for the prompt and regular payment and deposit of all city moneys as required by this section.

SEC. 60. *Contracts and Purchases.* No continuing contract (which involves the payment of money out of the appropriations of more than two years) except public utility franchises shall be made for a period of more than ten years; and no such contract shall be valid without public notice at least two weeks before final action of the council and the approval of two-thirds of all the members of the council, or submission to the electors of the city at a regular or special election and the approval of a majority of those voting thereon.

Any public work or improvement costing more than one thousand dollars shall be executed by contract, except

where a specific work or improvement is authorized by the council based on detailed estimates submitted by the department authorized to execute such work or improvement. All contracts for more than one thousand dollars shall be awarded to the lowest responsible bidder, after public advertisement and competition, as may be prescribed by ordinance. But the city manager shall have the power to reject all the bids and to advertise again; and all advertisements shall contain a reservation of this right.

SEC. 61. *Payment of Claims.* Payments by the city shall be made only upon vouchers certified by the head of the appropriate department or other division of the city government, and by means of warrants on the city treasury issued by the director of finance and countersigned by the city manager. The director of finance shall examine all payrolls, bills and other claims and demands against the city; and shall issue no warrant for payment unless he finds that the claim is in proper form, correctly computed, and duly certified; that it is justly and legally due and payable; that an appropriation has been made therefor which has not been exhausted or that the payment has been otherwise legally authorized; and that there is money in the city treasury to make payment. He may require any claimant to make oath to the validity of a claim. He may investigate any claim, and for such purposes may examine witnesses under oath; and if he finds it is fraudulent, erroneous, or otherwise invalid, shall not issue a warrant therefor.

SEC. 62. *Audit of Accounts.* Upon the death, resignation, removal or expiration of the term of any officer

of the city, other than the director of finance, the director of finance shall make an audit and investigation of the accounts of such officer, and shall report to the city manager and council.

As soon as practicable after the close of each fiscal year an annual audit shall be made of all the accounts of all city officers; and upon the death, resignation, removal or expiration of the term of the director of finance, an audit shall be made of his accounts. Such audits shall be made under the provisions of any law for the inspection and audit of municipal accounts by state officers; and if there is no such state inspection such audits shall be made by qualified public accountants, selected by the council, who have no personal interest, direct or indirect, in the financial affairs of the city or of any of its officers or employees. The council may at any time provide for an examination or audit of the accounts of any officer or department of the city government.

PUBLIC UTILITIES [23]

SEC. 63. *Granted by Ordinance.* All public utility franchises and all renewals, extensions and amendments

NOTE 23. The public utility and franchise policy embodied in a model city charter should be so formulated as to conserve and further the following purposes:

I. To secure to the people of the city the best public utility service that is practicable.

II. To secure and preserve to the city as a municipal corporation the fullest possible control of the streets and of their special uses.

III. To remove as far as practicable the obstacles in the way of the extension of municipal ownership and operation of public utilities, and to render practicable the success of such ownership and operation when undertaken.

IV. To secure for the people of the city public utility rates as

thereof shall be granted or made only by ordinance; but no such proposed ordinance shall be adopted until it has been printed in full and until a printed report containing recommendations thereon shall have been made to the council by the city manager [or the bureau of franchises], until adequate public hearings have thereafter been held on such ordinance and until at least two weeks after its official publication in final form. No public utility franchise shall be transferable except with the approval of the

low as practicable, consistent with the realization of the three purposes above set forth.

It should be no part of such policy to secure compensation for franchises or special revenues for general city purposes by an indirect tax upon the consumers of public utility services.

In formulating a policy to carry out the four purposes above stated the following principles should be recognized:

1. Each utility serving an urban community should be treated as far as practicable as a monopoly with the obligations of a monopoly; and its operation within the city should be based as far as practicable upon a single comprehensive ordinance or franchise grant uniform in its application to all parts of the city and to all extensions of plant and service.

2. Every franchise should be revocable by the city upon just compensation being paid to its owners, when the city is prepared to undertake public ownership.

3. The control of the location and character of public utility fixtures, the character and amount of service rendered, and the rates charged therefor should be reserved to the city, subject to reasonable review by the courts or a state utilities commission where one exists.

4. The granting and enforcement of franchises and the regulation of utilities operating thereunder should be subject to adequate public scrutiny and discussion and should receive full consideration by an expert bureau of the city government established and maintained for that purpose, or, in case the maintenance of such bureau is impracticable, by an officer or committee designated for the purpose.

5. Private investments in public utilities should be treated as investments in aid of public credit and subject to the public control and should be safeguarded in every possible way, and the rate of return allowed thereon should be reduced to the minimum return necessary in the case of safe investments with a fixed and substantially assured fair earning power.

council expressed by ordinance; and copies of all transfers and mortgages or other documents affecting the title or use of public utilities shall be filed with the city manager within ten days after the execution thereof.

SEC. 64. *Term and Plan of Purchase.* Any public utility franchise may be terminated by ordinance at specified intervals of not more than five years after the beginning of operation, whenever the city shall determine to acquire by condemnation or otherwise the property of such utility necessarily used in or conveniently useful for the operation thereof within the city limits.[24] The method of determining the price to be paid for the public utility property shall be fixed in the ordinance granting the franchise.

SEC. 65. *Right of Regulation.* All grants, renewals, extensions, or amendments of public utility franchises, whether it be so provided in the ordinance or not, shall be subject to the right of the city:

(a) To repeal the same by ordinance at any time for misuse or non-use, or for failure to begin construction within the time prescribed, or otherwise to comply with the terms prescribed;

(b) To require proper and adequate extensions of plant and service, and the maintenance of the plant and fixtures at the highest practicable standard of efficiency;

(c) To establish reasonable standards of service and

NOTE 24. Where a term limit for the franchise is desired, provision should be made either for amortization of the investment, or at least of that portion of it within the limits of public streets and places, during the term of the grant, or for purchase of the physical property at the end of the term.

quality of products and prevent unjust discrimination in service or rates.[25]

(d) To prescribe the form of accounts and at any time to examine and audit the accounts and other records of any such utility and to require annual and other reports by each such public utility; *Provided,* that if a public service commission or any other authority shall be given the power by law to prescribe the forms of accounts for public utilities throughout the state or throughout any district of which the city is a part, the forms so prescribed shall be controlling so far as they go, but the council may prescribe more detailed forms for the utilities within its jurisdiction;

(e) To impose such other regulations as may be conducive to the safety, welfare, and accommodation of the public.

Sec. 66. *Consents of Property Owners.* The consent of abutting and adjacent property owners shall not be required for the construction, extension, maintenance or operation of any publicity utility;[26] but any property owner shall be entitled to recover from the owner of such public utility the actual amount of damages to such property on account thereof less any benefits received

Note 25. A franchise should include provisions for the readjustment of rates from time to time, or for the accumulation of surplus earnings for the purchase of the property in case rates are fixed for a long period in the grant.

Note 26. In some states there are constitutional provisions requiring the consent of adjacent property owners for the construction and operation of street railways. The constitution of New York requires such consent, or in lieu thereof approval of the proposed construction by commissioners appointed by the appellate division of the Supreme Court, and confirmed by the Court. Some such provision as the latter may be desirable.

therefrom, provided, suit is commenced within two years after the damage is begun.

Sec. 67. *Revocable Permits.* Permits revocable at the will of the council for such minor or temporary public utility privileges as may be specified by general ordinance may be granted and revoked by the council from time to time in accordance with the terms and conditions to be prescribed thereby; and such permits shall not be deemed to be franchises as the term is used in this charter. Such general ordinance, however, shall be subject to the same procedure as an ordinance granting a franchise and shall not be passed as an emergency measure.

Sec. 68. *Extensions.* All extensions of public utilities within the city limits shall become a part of the aggregate property of the public utility, shall be operated as such, and shall be subject to all the obligations and reserved rights contained in this charter and in any original grant hereafter made. The right to use and maintain any extension shall terminate with the original grant and shall be terminable as provided in section 64 hereof. In case of an extension of a public utility operated under a franchise hereafter granted, such right shall be terminable at the same times and under the same conditions as the original grant.

Sec. 69. *Other Conditions.* Every public utility franchise hereafter granted shall be held subject to all the terms and conditions contained in sections 63 to 72 hereof, whether or not such terms are specifically mentioned in the franchise. Nothing in this charter shall operate to limit in any way, except as specifically stated, the discretion of the council or the electors of the city in im-

posing terms and conditions in connection with any franchise grant.

SEC. 70. *Franchise Records.* Within six months after this charter takes effect every public utility and every owner of a public utility franchise shall file with the city, as may be prescribed by ordinance, certified copies of all the franchises owned or claimed, or under which any such utility is operated. The city shall compile and maintain a public record of all public utility franchises and of all public utility fixtures in the streets of the city.

SEC. 71. *Bureau of Franchises and Public Utilities.* There shall be established by ordinance a bureau of franchises and public utilities, at the head of which shall be an officer to be appointed by the city manager.[27] This officer shall be an expert in franchise and public utility matters, and he shall be provided with such expert and other assistance as is necessary to enable him to perform his duties. It shall be the duty of this officer and bureau to investigate and report on all proposed ordinances relating to public utilities, to exercise a diligent oversight over the operation of all public utilities operated under franchises, to report thereon with recommendations to the city manager, to represent the city in all, except legal, proceedings before any state public utilities commission involving the public utilities within the city, and to perform such other

NOTE 27. In the smaller cities, say those of less than 50,000 population, it may not be feasible to maintain a separate bureau of franchises and public utilities, but in every city where there is no such bureau the duties described in this section should be specifically imposed upon the city manager. The bureau, when one exists, will be a part of the department of public works and utilities; but in the large cities it may be found desirable to create a separate department of utilities as suggested in note 19.

duties under the direction of the city manager as may be prescribed by the council.

SEC. 72. *Accounts of Municipally Owned Utilities.* Accounts shall be kept for each public utility owned or operated by the city, distinct from other city accounts and in such manner as to show the true and complete financial result of such city ownership, or ownership and operation, including all assets, liabilities, revenues, and expenses. These accounts shall show the actual cost to the city of each public utility owned; the cost of all extensions, additions and improvements; all expenses of maintenance; the amounts set aside for sinking fund purposes; and, in the case of city operation, all operating expenses of every description. They shall show as nearly as possible the value of any service furnished to or rendered by any such public utility by or to any other city or governmental department. They shall also show a proper allowance for depreciation, insurance, and interest on the investment, and estimates of the amount of taxes that would be chargeable against the property if privately owned. The council shall annually cause to be made and printed for public distribution a report showing the financial results of such city ownership, or ownership and operation, which report shall give the information specified in this section and such other information as the council shall deem expedient.

CITY PLANNING

SEC. 73. *Creation of a City Planning Board.* There shall be a city planning board of three members, consist-

ing of the director of public works and utilities and two citizen members chosen because of their knowledge of city planning.[28] It shall be the duty of the board to keep itself informed of the progress of city planning in this and other countries, to make studies and recommendations for the improvement of the plan of the city with a view to the present and future movement of traffic, the convenience, amenity, health, recreation, general welfare, and other needs of the city dependent on the city plan; to consider and report upon the designs and their relations to the city plan of all new public ways, lands, buildings, bridges, and all other public places and structures, of additions to and alterations in those already existing, and of the layout or plotting of new subdivisions of the city, or of territory adjacent to or near the city.

Sec. 74. *Power of Board.* All acts of the council or of any other branch of the city government affecting the city plan shall be submitted to the board for report and recommendations. The council may at any time call upon the board to report with recommendations, and the board of its own volition may also report to the council with recommendations on any matter which, in the opinion of either body, affects the plan of the city.

Any matter referred by the council to the board shall be acted upon by the board within thirty days of the date of reference, unless a longer or shorter period is specified. No action by the council involving any points hereinbefore set forth shall be legal or binding until it has been

Note 28. In larger cities having a separate director of utilities a board of five members, consisting of the director of public works, the director of utilities, and three citizen members, is recommended.

referred to the board and until the recommendations of the board thereon have been accepted or rejected by the council.

SEC. 75. *Annual Report.* The board shall submit to the council an annual report summarizing the activities of the board for the fiscal year, the recommendations made by it to the council during the year and the action of the council during the year on any and all recommendations made by the board in that or former years. The annual report of the board shall also contain a program for improvements to the city plan year by year during the three years next ensuing, with estimates of the cost thereof and recommendations as to how the cost shall be met.

..SEC. 76. *Secretary of the Board.* The board shall appoint as secretary a person of skill and experience in city planning and may employ consulting city planning experts as need may arise. The city engineer shall serve as chief engineer of the city planning board, and it shall be his particular duty to make recommendations designed to bring all the engineering works of the city into harmony as parts of one comprehensive plan. The executive health officer of the city shall advise the planning board from time to time of any municipal improvements within the scope of the board which, in his opinion, would improve the healthfulness of the city. The board shall have power to call upon any branch of the city government at any time for information and advice which in the opinion of the board will insure the efficiency of its work.[29]

NOTE 29. In some places it may be desirable to give the city planning board some of the powers conferred on the existing

MISCELLANEOUS PROVISIONS

SEC. 77. *Publicity of Accounts.* All accounts and the records of every office and department of the city shall be open to the public at all reasonable times under reasonable regulations, except records and documents from which might be secured information which might defeat the lawful purpose of the officer or department withholding them from access to the public.

SEC. 78. *No Personal Interest.* No member of the council nor any officer or employee of the city shall have a financial interest, direct or indirect, in any contract with the city, or be financially interested, directly or indirectly, in the sale to the city of any land, materials, supplies, or services, except on behalf of the city as a member of the council, officer, or employee; *Provided,* that the ownership of less than 5 per cent of the stock or shares of a corporation or association with which a contract may be made shall not be considered as involving an interest in the contract within the meaning of this section. No officer or employee of a public utility operating in the city shall be a member of the council. Any willful violation of this section shall constitute malfeasance in office, and any member of the council, officer, or employee found guilty thereof shall thereby forfeit his office or position.

municipal art commissions in the United States. These powers relate to the æsthetic features of public buildings, bridges, and other public structures, and embrace the acceptance or rejection of works of art or designs therefor to be placed in public buildings or in other places within the city. The section in the Cleveland charter relating to city planning commission and the ordinance based on it are commended for careful consideration, especially the method provided for the effective control of land subdivision.

Any violation of this section, with the knowledge, expressed or implied, of the person or corporation contracting with the city, shall render the contract involved voidable by the city manager or the council.

SEC. 79. *When Charter Shall Take Effect.* For the purpose of nominating and electing officers as provided herein, this charter shall take effect from and after the time of its approval by the electors of the city. For the purpose of exercising the powers of the city, establishing departments, divisions, and offices, and distributing the functions thereof, and for all other purposes, it shall take effect on the first day of

APPENDIX A

PREFERENTIAL BALLOT

(To be inserted, if desired, after section 11 of the charter)

SECTION 12. *Preparation of Ballot.* All ballots used in elections held under the authority of this charter shall be printed by the city and shall contain the names of the candidates without party or other designation. The order of arrangement of the names shall be alphabetical in rotation; that is, there shall be as many sets of ballots printed as there are candidates. Each set of ballots shall begin with the name of a different candidate, the other names being arranged thereafter in regular alphabetical order, commencing with the name next in alphabetical order after the one that stands first on that set of ballots. When the last name is reached in alphabetical order it shall be followed by the name that begins with the first

letter represented in the list of names and by the others in regular order. The ballots so printed shall then be combined in tablets, so as to have the fewest possible ballots having the same order of names printed thereon together in the same tablet.

Arrangement for First, Second, and Other Choices. After the column containing the names of the candidates, arranged as indicated, there shall be printed three columns headed "first choice," "second choice," and "other choices" respectively. Each voter shall be entitled to place as many crosses in the column marked "first choice" as there are offices to be filled. He shall also be entitled to place as many crosses in the column marked "second choice" as there are offices to be filled, provided that he may not mark a cross in the column marked "second choice" after a name for which he has marked a cross in the first column. He may also place in the column marked "other choices" crosses after any names which he has not designated as first or second choices.

Form of Ballot. The form of the ballot with the voter's choices thereon shall be substantially the following:

REGULAR (OR SPECIAL) MUNICIPAL ELECTION

NAMES OF CANDIDATES	FIRST CHOICE	SECOND CHOICE	OTHER CHOICES
A	X		
B		X	
C			
D			X
E			X

INSTRUCTIONS

Vote your first choice in the first column. Vote your second choice in the second column. Vote in the third column for any other candidates whom you are willing to support.

Do not vote more than one first choice and one second choice for any one office.

If you wrongly mark, tear or deface this ballot, return it and obtain another.

When more than one candidate is to be chosen the foregoing instructions must be modified in accordance with the provisions of section 2.

SECTION 13. *Counting of Ballots.* The ballots shall be counted by adding up the first choices cast for each candidate. If any candidates receive a number of first choices equal to a majority of all the valid ballots cast, they shall be declared elected in the order of the votes received. As to candidates who have not received such a majority, the number of second choices cast for each candidate shall then be counted and shall be added to the number of first choices. Any candidates who have then a total of first and second choices equal to a majority of all valid ballots cast shall be declared elected in the order of the number of votes received. If a sufficient number of candidates have not yet received the required majority, the other choices cast for each candidate shall be added to his first and second choices, and candidates shall be declared elected in the order of the number of votes received. In case of a tie, the order of precedence shall be determined by the larger number of first choices in the vote.

APPENDIX B

Report of National Municipal League Committee on Municipal Budgets and Accounting

Springfield, Mass., November 23, 1916

Your Committee met in April of this year, and after considerable discussion, agreed upon the requirements of the Model Budget. These requirements took the shape of proposed amendments to the financial provisions of the Model City Charter, and were presented to the Committee on Municipal Program. Since, however, this Committee had already printed its statement of the financial provisions as they should appear in the Model Charter, and it did not seem expedient to make any changes, the Committee on Budgets suggests that their report as herewith submitted, be printed separately or as an appendix to the Model City Charter, as elaborating some of its provisions, and furnishing budget forms which are not contained in the report of the Committee on City Charter.

financial requirements

Accounts and Records.— Accounts shall be kept by the department of finance, which shall exhibit the financial transactions for all departments of the city. Forms for all such accounts shall be prescribed by the director of finance with the approval of the city manager, which shall be adequate for recording all cash receipts and disbursements, all revenues accrued and all liabilities incurred, as well as all transactions affecting the acquisition,

custody, and disposition of municipal properties and values. Forms for reports exhibiting the financial transactions and the financial condition of the city as well as other reports which may be required by law or ordinance shall also be prescribed in the same manner. Financial reports shall be prepared for each quarter and each fiscal year, and for such other periods as may be required by the city manager, or by the council.

Annual Budgets.— Not later than one month before the end of each fiscal year, the city manager shall prepare and submit to the council an annual budget for the ensuing fiscal year, based upon detailed estimates furnished by the several departments and other divisions of the city government. The budget shall in addition to the proposed appropriation bill and revenue measures present the following information:

(A) A brief summary showing the estimated financial requirements and the proposed methods of meeting them for the next fiscal year.

(B) An operation account to consist of a summary statement of actual revenues and expenditures for the preceding fiscal year and of the estimated revenues and expenditures for the current and for the succeeding fiscal year. This account shall be supported by (1) A detailed analysis and statement of actual and estimated expenditures classified according to departments and other organization units to which appropriations are made. (2) A detailed analysis and statement of actual and estimated expenditures classified according to functions which have been carried on and for the support of which appropriations are requested (i. e., "Work Program"), to be

carried into such detail as may be required by the executive, or accounting officers of the city for the purpose of showing the unit, or other, costs to work. (3) An analysis and statement of actual and estimated expenditures classified to show amounts spent and to be spent for things bought — and to be bought — and for contractual obligations met and to be met. (4) A detailed analysis and statement of actual revenues accrued and estimated revenues to accrue under exisiting laws and conditions, classified according to sources or kinds of revenue raised (actual) and to be raised (estimated.)

(C) A statement of financial condition showing the actual current assets, liabilities, reserves and surplus (or deficit) at the end of the preceding year, also at the end of the last month, or interim statement, of the current year, and the estimated current assets and liabilities as of the beginning and end of the coming fiscal year. This statement to be supported by (1) a statement of cash receipts and disbursements showing the actual cash receipts and disbursements of the preceding fiscal year and the estimated cash requirements of the current and succeeding fiscal years classified by funds as established by law. (2) A surplus account analysis of the actual credits and debits to surplus during the preceding fiscal year, also the estimated credits and debits of the current and succeeding fiscal years.

(D) A fund statement showing the actual condition of each fund established by law at the end of the preceding fiscal year, also the estimated condition of the funds at the beginning and end of the coming fiscal year, supported by (1) A summary and detailed statement of

"general fund" appropriation accounts. (2) A summary and detailed statement of special revenue appropriation accounts. (3) Trust funds. (4) Bond funds.

(E) Such other information as may be required by the council.

Copies of such budget shall be printed and available for distribution not later than two weeks after its submission to the council; and a public hearing shall be given thereon by the council or a committee thereof before action by the council.

EXHIBIT I — Summary of Estimates, showing the "Financial Plan" for the Next Fiscal Year (19)

Summary of Estimates	Totals	Expenses and Fixed Charges	Capital Outlays	Contingencies and Losses
Estimated Expenditures for 19 :				
Personal Services (estimated total of payrolls)				
Services other than personal (1)				
Materials and Supplies (estimated purchases)				
Equipments and parts (estimated purchases)				
Land and Improvements (2)				
Debt Payments and Sinking Fund Instalments				
Interests, rents, royalties and other proprietary charges				
Contributions (to institutions, etc.)				
Pensions and retirement allowances				
Judgments, mandamuses, etc.				
Other				
Total estimated requirements for next year				
Estimated funds available:				
Net expendable surplus (all funds): Cash (net)				
Resources other than cash (net)				
General fund revenues (present basis)				
Special fund revenues (present basis)				
Local improvement funds				
Loan fund accruals				
Total available for next year				
Estimated excess of expenditures over funds available				
Estimated excess of funds available over expenditures				

1 Telephones, telegraph, light, power, transportation, printing, advertising, repairs and reconstruction, etc., by contract and open-market order.
2 Docks, bridges, buildings, local improvements, etc.

EXHIBIT II — "General Operation Account," Showing Actual and Estimated Revenues for Three Years

General Classification of Revenues and Expenses	Fiscal Years				
	19.... (Actual)	19.... (Current)			19.... Estimate for Next Year
		..... Months (actual)	..... Months (estimated)	Total	
Revenues accrued (by sources):					
Real estate taxes					
Personal property taxes					
..... (1)					
.....					
Net profit or loss on municipal industries					
Miscellaneous revenues					
Total revenues					
Charges against revenues:					
Expenses (by functions):					
General and overhead					
Public service activities:					
Administration of justice					
Protection of persons and property					
Preservation of health...					
Public education and recreation					
Care of dependent, defective and delinquent.					
Providing transportation facilities					
Promoting economic interests					
Military defense (armories, etc.)					
.....					
Total expenses					
Fixed charges:					
Interest					
Pensions and retirements ...					
Other					
Total fixed charges					
Total expenses and fixed charges					
Debt payments and sinking fund instalments					
Total charges against revenues					
Excess of revenues over "charges against revenues"					
Excess of "charges against revenues" over revenues..					

1 Insert other classes of revenues.

EXHIBIT III — "CURRENT BALANCE SHEET,"— SHOWING ACTUAL AND ESTIMATED CURRENT ASSETS, LIABILITIES AND RESERVES, AS OF THE RESPECTIVE DATES SHOWN BELOW

Current Assets (Available for Expenses and other Charges against Revenues)	Last Fiscal Year (19....) At Beginning (Actual)	Last Fiscal Year (19....) At End (Actual)	Current Year (19....) Last Available Date (19....) (Actual)	Ensuing Year (19....) At Beginning (Estimated)	Ensuing Year (19....) At End (Estimated)
Cash (in bank and in hand)..					
Amounts due to City:					
Uncollected real estate taxes					
Uncollected personal property taxes					
Uncollected other taxes ...					
Uncollected miscellaneous revenues					
Uncollected water rates ...					
.....					
.....					
Stores on hand					
Advances:					
For rents (paid in advance)					
For insurance (paid in advance)					
.....					
.....					
Other current assets					
.....					
.....					
Total current assets					
Current liabilities					
Immediate demands for cash					
Mandamuses payable ..					
Vouchers audited					
Checks and warrants outstanding					
Total immediate demands					
Unaudited invoices and accounts payable					
.....					
.....					
Loans against revenues ...					
Reserves:					
For expenses, etc. (unexpired months of year)...					
For uncollectible taxes					
For losses (failed banks, etc.)					
.....					
Total liabilities and reserves					
Surplus (or deficit)					
Cash over "immediate demands for cash"					
Other assets over "other liabilities and reserves" ...					
Total liabilities, reserves and surplus					

EXHIBIT IV — "SURPLUS ACCOUNT" — SHOWING THE CREDITS TO AND CHARGES AGAINST CURRENT SURPLUS FOR NET OPERATING CURRENT YEAR AND TRANSACTIONS AND LOSSES PERTAINING TO PRIOR PERIODS

Items	Last Year (19) (Actual)	Current Year (19)		Next Year 19.... (Estimated)
		..... Months Expired (Actual)	..... Months Unexpired (Estimated)	
Surplus at beginning of period (see current balance sheet — Surplus Exhibit III)				
Credits to surplus:				
Excess of revenues over expenses and fixed charges (see Exhibit II).....				
Transfers to surplus				
.....				
.....				
.....				
Additions to delinquent taxes				
.....				
.....				
Additions to inventories				
.....				
.....				
Other Credits				
Total				
Charges against surplus:				
Excess of expenses and fixed charges over revenues (see Exhibit II).....				
Transfers from surplus				
.....				
Allowances and deductions of delinquent taxes				
Invoices audited in excess of amounts reported				
Other Charges				
.....				
Total charges				
Balance of surplus at end of period				

EXHIBIT V—"FUND STATEMENT," SHOWING THE ACTUAL AND ESTIMATED CONDITION OF FUNDS AS OF..... 19..

Funded Resources, Appropriations and Reserves	Last Fiscal Year, 191.... (Actual)					
	Funds Available for Expenses and Fixed Charges			Funds Available for Improvements and Debt Payments		
	General Fund	Special Funds	Total	Loan Funds	Improvement Funds	Sinking Funds
Funded resources:						
Unapplied (net) cash balances (1)						
Estimated revenues (funded for current year)						
Net uncollected revenues and assessments (past years)						
Loans authorized and unissued						
Investments						
Other funded resources						
.....						
.....						
Total funded resources						
Appropriations and encumbrances:						
Unexpended balance of appropriations						
Encumbrances of appropriations (contracts, etc.)						
Unencumbered balance of appropriations						
Fund reserves						
Total appropriations and reserves						
Unappropriated balances — surplus						
Total appropriations, reserves and surplus						

[1] Total cash in hand and in bank, less audited vouchers, outstanding checks and other immediate demands (See Exhibits III and VI).

EXHIBIT V—"FUND STATEMENT," SHOWING THE ACTUAL AND ESTIMATED CONDITION OF FUNDS AS OF..... 19.. (*Continued*)

Funded Resources, Appropriations and Reserves	Current Fiscal Year, 191.... (Actual) to Last Available Date						Next Fiscal Year, 191.... (Estimated)					
	Funds Available for Expenses and Fixed Charges			Funds Available for Improvements and Debt Payments			Funds Available for Expenses and Fixed Charges			Funds Available for Improvements and Debt Payments		
	General Fund	Special Funds	Total	Loan Funds	Improvement Funds	Sinking Funds	General Fund	Special Funds	Total	Loan Funds	Improvement Funds	Sinking Funds
Funded resources:												
Unapplied (net) cash balances (1)												
Estimated revenues (funded for current year												
Net uncollected revenues and assessments (past years)....												
Loans authorized and unissued.												
Investments												
Other funded resources												
.....												
.....												
Total funded resources												
Appropriations and encumbrances:												
Unexpended balance of appropriations												
Encumbrances of appropriations (contracts, etc.)												
Unencumbered balance of appropriations												
Fund reserves												
Total appropriations and reserves												
Unappropriated balances — surplus												
Total appropriations, reserves and surplus												

1 Total cash in hand and in bank, less audited vouchers, outstanding checks and other immediate demands (See Exhibits III and VI)

EXHIBIT VI—"Cash Receipts and Disbursements,"—Summary Showing Cash Received and Disbursed, Classified by Funds for the Period ———— to ———— 19—

Items	Last Fiscal Year, 191.... (Actual)					
	Funds Available for Expenses and Fixed Charges			Funds Available for Improvements and Debt Payments		
	General Fund	Special Funds	Total	Loan Funds	Improvement Funds	Sinking Funds
Unapplied (net) cash balance at beginning of year (see Exhibit V)						
Plus amount set aside to meet immediate demands for cash at beginning of period						
Total cash on hand and in bank (see Exhibit III beginning dates)						
Cash receipts:						
Revenues — taxes						
Revenues — miscellaneous						
Assessments						
Loans						
Sales						
Other						
Transfers to funds						
Total receipts						
Total receipts plus cash balance						
Cash Disbursements:						
Vouchers for						
Expenses and fixed charges						
Improvements						
Debt payments						
Mandamuses						
Transfers from funds						
Total disbursements						
Amount required to meet "immediate demands for cash"						
Unapplied (net) cash balance, available at end of period						

EXHIBIT VI—"CASH RECEIPTS AND DISBURSEMENTS,"—SUMMARY SHOWING CASH RECEIVED AND DISBURSED, CLASSIFIED BY FUNDS FOR THE PERIOD ——— TO ——— 19— (*Continued*)

Items	Current Fiscal Year, 191.... (Actual) to Last Available Date						Next Fiscal Year, 191.... (Estimated)					
	Funds Available for Expenses and Fixed Charges			Funds Available for Improvements and Debt Payments			Funds Available for Expenses and Fixed Charges			Funds Available for Improvements and Debt Payments		
	General Fund	Special Funds	Total	Loan Funds	Improvement Funds	Sinking Funds	General Funds	Special Funds	Total	Loan Funds	Improvement Funds	Sinking Funds
Unapplied (net) cash												
Balance at beginning of year (see Exhibit V).....												
Plus amount set aside to meet immediate demands for cash at beginning of period												
Total cash on hand and in bank (see Exhibit III beginning dates)												
Cash receipts:												
Revenues — taxes												
Revenues — Miscellaneous												
Assessments												
Loans												
Sales												
Other												
Transfers to funds												
.....												
Total receipts												
Total												
Cash disbursements:												
Vouchers for												
Expenses and fixed charges..												
Improvements												
Debt payments												
Mandamuses												
Transfers from funds												
.....												
Total disbursements												
Amount required to meet immediate demands for cash												
Unapplied (net) cash balance available at end of period...												

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